



---

# **ECONOMIC DEVELOPMENT & COMMUNITY AFFAIRS POLICY COUNCIL**

## **Meeting Packet**

**Thursday, December 3, 2009  
11:15 A.M. – 6:00 P.M.  
404 HOB**

**REVISED1**

# **Council Meeting Notice**

## **HOUSE OF REPRESENTATIVES**

### **Economic Development & Community Affairs Policy Council**

**Start Date and Time:** Thursday, December 03, 2009 11:15 am

**End Date and Time:** Thursday, December 03, 2009 06:00 pm

**Location:** 404 HOB

**Duration:** 6.75 hrs

**Consideration of the following proposed council bill(s):**

PCB EDCA 09B-01 -- Act Relating to Transportation

**NOTICE FINALIZED on 12/01/2009 14:50 by ADEYEMO.MARTHA**





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB EDCA 09B-01      Act Relating to Transportation  
**SPONSOR(S):** Economic Development & Community Affairs Policy Council  
**TIED BILLS:**      **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Economic Development & Community Affairs Policy Council		Johnson <i>GAJ</i>	Tinker <i>TBT</i>
1)				
2)				
3)				
4)				
5)				

### SUMMARY ANALYSIS

The bill establishes a comprehensive framework for passenger rail in Florida. Specifically, the bill:

- Creates the Statewide Passenger Rail Commission to serve in an advisory capacity to the Department of Transportation (DOT) and the Legislature concerning passenger rail issues in Florida.
- Creates the Florida Rail Enterprise within the DOT to oversee the development and operation of state-owned passenger rail systems, including high speed rail. Many of the functions of the current High Speed Rail Authority are assigned to the Enterprise, and the High Speed Rail Authority is essentially replaced by the Enterprise.
- Establishes a dedicated source of funding for future state-owned passenger rail systems by allocating the first \$60 million of documentary stamp tax proceeds going to the Transportation Regional Incentive Program to the Florida Rail Enterprise. This reallocation will begin July 1, 2014 to avoid disruption to the current five year transportation work program.
- Provides an additional \$13 million to \$15 million annually from transportation revenues to the South Florida Regional Transit Authority to fund the operations of Tri-Rail.
- Authorizes the DOT to fund up to 100 percent of the operating costs of future state-owned passenger rail systems for a period not to exceed seven years.
- Establishes the framework for the allocation and assumption of risks associated with state-owned passenger rail corridors, and authorizes DOT to purchase insurance and establish a self-retention fund to insure against liability risks associated with state-owned passenger rail corridors.
- Authorizes DOT to complete an escrowed closing on the Central Florida Rail Corridor (SunRail) acquisition; however the drawdown of the escrowed closing cannot occur until the Federal Transit Administration's full-funding grant agreement is in place.
- Requires DOT to work with affected local communities along an impacted freight rail corridor to identify and address the impacts associated with an increase in freight traffic due to implementation of state-owned passenger rail systems.

Further, beginning July 1, 2014, the bill increases the allocation of documentary stamp tax proceeds going to the Small County Outreach program from 5 to 10 percent. These funds may be used for any eligible transportation projects.

Fiscal impacts of the bill will be funded through the reallocation of existing transportation revenues and the increased revenues to the State Transportation Trust Fund projected by the November 2009 Transportation Revenue Estimating Conference. Projects within the existing five year work program will not be affected by this bill.

Except as otherwise provided, this act shall take effect upon becoming law.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

##### **Introduction and Background**

Florida's future economic competitiveness and quality of life require meeting increasing demands for moving people and goods in a sustainable manner. Our highways are experiencing high levels of congestion, while our rail systems, airports, and seaports must attempt to keep pace with demand for mobility.

Florida's rail network is almost entirely owned and maintained by private interests. DOT's rail program includes safety inspections, acquisition of rail corridors, assistance in developing intercity passenger and commuter rail service, and intercity rail transportation. Recently, DOT has assisted the freight railroads with capacity increasing improvements through various state funding programs.

Florida's freight rail system is comprised of 2,796 miles of track routes owned by 15 line-haul railroads and terminal or switching companies, as well as 81 miles owned by the state.

Florida's rail system is an integral part of the Strategic Intermodal System (SIS). The SIS includes transportation facilities such as deepwater seaports; commercial airports; waterways; rail corridors; highways; and intercity bus, spaceport, passenger rail terminals, and freight rail terminals. Rail facilities designated on the SIS carry 100 percent of all interregional rail passengers and over 90 percent of the freight rail tonnage.

##### ***Intercity Passenger Rail***

For passenger rail in Florida, Amtrak operates four distinct services, the Auto Train, Silver Meteor, Silver Star, and Sunset Limited, covering 24 stations over lines owned by CSX Transportation and the DOT's South Florida Rail Corridor.

Tri-Rail is operated by the South Florida Regional Transportation Authority (SFRTA) and covers a 72-mile-long corridor (142.2 directional route miles) between West Palm Beach and Miami. Tri-Rail has 18

stations along the south Florida coast including five stations in Miami-Dade County, seven in Broward County, and six in Palm Beach County.

### Federal ARRA Project Applications

The Florida DOT submitted applications for rail projects under the United States Department of Transportation's High-Speed Intercity Passenger Rail (HSIPR) program as part of the American Recovery and Reinvestment Act (ARRA). DOT is requesting a total of \$3.2 billion to fund the implementation of four projects identified below. The awards are expected to be announced in Winter 2009.

- Commuter Rail Passenger Service in Central Florida - \$270 million to purchase the Central Florida corridor known as SunRail.
- High Speed Rail Preliminary Design and Engineering from Orlando to Miami - \$30 million for the preliminary study necessary for the Orlando to Miami segment of high speed rail.
- Florida East Coast Amtrak Service - \$268 million to restore and enhance intercity passenger rail service along 350 miles of Florida's east coast between Jacksonville and Miami via the existing Florida East Coast Railway.
- Tampa-Orlando-Miami High Speed Rail Express - \$2.6 billion to construct the Orlando to Tampa segment of high speed rail. The total length of this route is 85 miles; the final environmental impact statement (FEIS) has been completed.

The projects submitted for funding by FDOT **are all independent of each other** and have met eligibility requirements as **stand-alone projects**.

### *Other ARRA Project Issues*

All of these projects, if built, will likely require an operations subsidy from the state and/or local governments. This is based on the past history of fare-box recovery ratios of existing passenger rail systems. Due to the uncertainty of ridership forecasts for these proposed projects the amount of any operations subsidy cannot accurately be estimated. For example, in its application for SunRail, DOT estimated the state's operating subsidy for the first seven years of operation to total \$64 million in 2009 dollars.

Except for SunRail, there are no future state funds committed for the construction, operations, or maintenance of these facilities. The capital costs may come from HSIPR grants, however operations and maintenance costs will be covered by fares, local governments, and potentially private funding from businesses along the corridor. DOT may also enter into public-private partnership arrangements to build and operate these rail systems.

### SunRail

DOT has an agreement with CSX to purchase 61.5 miles of track in Central Florida. This track goes from Deland in Volusia County to Poinciana in Osceola County. DOT plans to use these existing freight tracks to provide commuter rail service, with CSX still operating freight trains on the corridor. This project is known as SunRail.

The agreement between DOT and CSX provides the following project commitments:

- Land acquisition
  - \$432 million to purchase track

- CSX is responsible for making \$282 million in improvements to A-Line and S-Line infrastructure around the state
- Capital Costs: \$615 million
  - 50 percent federal -\$307.5 million
  - 25 percent state-\$153.75 million
  - 25 percent local-\$153.75 million
- Operations and Maintenance
  - State pays operations and maintenance cost for first seven years estimated by DOT to total \$64 million in 2009 dollars.
  - Local Rail Commission assumes 100 percent funding responsibility in year eight

DOT has set aside sufficient funds for SunRail in the transportation work program, with the exception of \$270 million which is the subject of one of the federal ARRA grant applications discussed above.

In order for DOT to implement the agreement with CSX, the legislature must establish the liability framework necessary for state owned passenger rail and privately owned freight rail to operate on the same corridor.

### Tri-Rail

Tri-Rail is a regional rail system lining Palm Beach, Broward, and Miami-Dade counties. It runs approximately 72 miles and is operated by the South Florida Regional Transportation Authority (SFRTA).

The Tri-County Commuter Rail Authority was created in 1986 to assist commuters in Miami-Dade, Broward and Palm Beach counties while I-95 was under construction and to introduce regional transit to the public. DOT's investment into the project was centered on providing alternative transportation within the corridor during the widening of the interstate. In 1989, DOT purchased the track from CSX. Funding for the operations of Tri Rail is shared 50 percent by the three counties and 50 percent by DOT. CSX has continued to provide dispatch services within the corridor, through a funding agreement with DOT.

In 2003, the Legislature transformed the Tri-County Commuter Rail Authority into the South Florida Regional Transportation Authority and established in law a minimum annual commitment per county of \$1.565 million to support SFRTA operating costs and a commitment of \$2.67 million per year to help secure matching federal funds for future capital projects.

In order to provide additional capacity within the corridor, SFRTA requested and received a Full Funding Grant Agreement (FFGA) with the Federal Transit Administration (FTA) to double-track most of the rail corridor. The FTA provided \$256 million to the project and the three counties in total provided \$76 million. With the completion of the double tracking of the corridor in 2006, SFRTA increased service to 48 trains per day, which was a requirement of the FTA agreement. This resulted in increased operating costs. Each county contributed in excess of the statutory minimum in 2007 and 2008. In 2008, the counties contributed \$4.37 million each; DOT matched the county contributions.<sup>1</sup>

Earlier this year the three counties said they could not support the increased operating costs, and would have to reduce their operating contributions to the statutory minimum of \$1.565 million per year. The SFRTA made up the operating shortfall through budget reductions and other efficiencies and by transferring the \$2.67 million contribution for matching federal funding (capital) to support operations.

---

<sup>1</sup> Background information on Tri-Rail is from a fact sheet provided by DOT.



For the FY 2009-2010 budget, these measures are sufficient to continue the required service level and satisfy the federal funding agreement. However, the SFRTA is uncertain that it will be able to sustain this level of funding in the future.

In a letter dated September 17, 2009, to the SFRTA, the FTA raised concerns regarding the SFRTA's ability to maintain the agreed upon service levels, suggesting that "any significant reduction in these service levels and associated reductions in your operating and maintenance funding will call into question your continued compliance with the terms and conditions of the FFGA and may result in a default of the FFGA". In the event of a default, the federal government may demand all federal funds that have been provided to support the project be returned. This could affect future federal funding to the State of Florida for transportation projects statewide.

DOT annually contributes \$18.9 million to support SFRTA operations and this is reflected as an ongoing commitment in the DOT work program. Additionally, DOT annually provides almost \$10 million to CSX for dispatch and maintenance in the South Florida Corridor. Assuming these amounts continue, and the local governments maintain their minimum statutory contributions, the annual operating deficit for the SFRTA is between \$13 million and \$15 million.

### High-Speed Rail

In November 2000, the Florida voters approved a constitutional amendment<sup>2</sup> mandating the construction of a high speed transportation system for the state. The amendment required the use of train technologies that operate at speeds in excess of 120 miles per hour. The high speed rail system was to link the five largest urban areas in Florida, and construction was mandated to begin by November 1, 2003. To implement the constitutional amendment, the Florida Legislature enacted the Florida High Speed Rail Authority Act<sup>3</sup> and created the Florida High Speed Rail Authority in 2001.

In November 2004, the 2000 constitutional amendment was repealed. Although the amendment has been repealed, the Florida High Speed Rail Authority Act is still in effect.

Prior to repeal of the constitutional amendment, the Florida High Speed Rail Authority developed a strategic plan for high speed rail in Florida, undertook the project development and environmental study process for the initial Tampa to Orlando segment, and conducted a planning study for the Orlando to Miami segment.

The Authority operated with funds derived from appropriations by the state and specific Congressional earmarks. Since fiscal year 2004-2005, no state funds have been appropriated, and the Authority operated on surplus funds from previous years. The authority is currently not active and the terms of its members have expired.<sup>4</sup>

### Proposed Changes

#### State Rail Transit

In order to implement a comprehensive rail transit policy in Florida, the bill creates two new state entities within the Department of Transportation.

#### **Florida Statewide Passenger Rail Commission**

---

<sup>2</sup> Section 19, Article X of the State Constitution

<sup>3</sup> Sections 341.8201 through 341.842, F.S.

<sup>4</sup> Information on the Florida High-Speed Rail Authority is available at <http://www.floridahighspeedrail.org/>.

The bill creates the Florida Statewide Passenger Rail Commission. The primary functions of the commission will be to:

1. Monitor the efficiency, productivity, and management of all publicly-funded passenger rail systems in the state.<sup>5</sup> The commission is required to advise the authorities operating passenger rail systems of its findings and recommendations. The commission is also required to conduct a periodic review of the authorities' passenger rail and associated transit operations and budget, acquisition of property, management of revenue and bond proceeds, and compliance with applicable laws and generally accepted accounting principles. The commission may seek the assistance of the Auditor General to conduct these reviews. The commission must also report to the Legislature findings from these reviews. This does not preclude the Florida Transportation Commission from conducting its performance and work program monitoring responsibilities.
2. Advise DOT on policies and strategies used in the planning, designing, building, operating, financing, and maintaining a coordinated statewide system for passenger rail service.
3. Evaluate passenger rail policies and provide advice and recommendations on passenger rail operations in the state.

The commission will have nine voting members appointed as follows:

*Governor*-Three members, one with an environmental background, one with a legislative background, and one with a general business background. The terms of these initial appointments is four years.

*President of the Senate*-Three members, one with a civil engineering background, one with a transportation construction background, and one with a general business background. The terms of these initial appointments is three years.

*Speaker of the House of Representatives*-Three members, one with a legal background, one with a finance background, and one with a general business background. The terms of these initial appointments is two years.

Following the initial appointments, the succeeding terms of commissioners are for four years. Vacancies on the commission are filled by the respective appointing authority in the same manner as the original appointment and only for the balance of the unexpired term. The vacancy shall be filled within 60 days.

The commission elects one member as chair who holds office at the will of the commission. Five members of the commission constitute a quorum, and the vote of five members is necessary for the commission to take any action. The commission may meet when there is a quorum. Vacancies on the commission do not impair the right of a quorum to exercise all rights and perform all duties.<sup>6</sup>

The board's members are not entitled to compensation, but are entitled to travel and other necessary expenses as provided in s. 112.061, F.S.

The commission or its members may not enter into the day to day operations of DOT or a monitored authority and are prohibited in taking part in:

---

<sup>5</sup> This includes authorities created under chs. 343, 349, or 163, F.S. Part V of ch. 163, F.S. allows for two or more contiguous counties, municipalities, or political subdivisions to develop a charter for a regional transportation authority.

<sup>6</sup> The membership and appointment process of the rail commission is identical to the current High-Speed Rail Authority except that the Secretary of DOT is an ex officio member of the High-Speed Rail Authority.

1. Awarding of contracts
2. The selection of a consultant or contractor. However the commission may recommend standards and policies governing the selection or prequalification of consultants or contractors.
3. Selection of a route for a specific project
4. Specific location of a transportation facility
5. Acquisition of right-of-way
6. Employment issues
7. Licensing issues<sup>7</sup>

The Commission is assigned to the Office of the Secretary of the Department of Transportation for the purposes of administrative and fiscal accountability. However, it is to otherwise function independently. Reasonable expenses of the commission are subject to the approval of the Secretary of Transportation. DOT is required to provide administrative support to the commission.

The bill eliminates the Florida Transportation Commission's oversight of any regional transportation authority operating under the oversight of the newly created Florida Statewide Passenger Rail Commission.

## **Florida Rail Enterprise**

### Creation of the Florida Rail Enterprise

The bill creates the Florida Rail Enterprise within DOT, modeled after the Florida Turnpike Enterprise. The Rail Enterprise is headed by an Executive Director, appointed by the Secretary of DOT. The executive director must meet the same qualifications as a DOT district secretary or the turnpike executive director.<sup>8</sup> The headquarters of the rail enterprise must be in Leon County.

The Enterprise is given the responsibility for developing and operating the state owned passenger rail systems in Florida including high speed rail, funding passenger rail systems, and coordinating publicly-funded passenger rail operations, including interoperability issues with freight rail.

DOT is required to facilitate the most efficient and effective management of the rail enterprise, including the use of best business practices. Except as provided in s. 287.055, F.S.,<sup>9</sup> the enterprise is exempt from DOT policies, procedures, and standards, subject to the secretary having the authority to apply any policies, procedures, and standards, to the rail enterprise from time to time as deemed appropriate.

The bill provides that the Florida Rail Enterprise will be a single budget entity within the Department of Transportation. The bill establishes that unexpended funds appropriated to the Enterprise are carried forward from year to year.

### Legal Liability for State Owned Passenger Rail Systems

The bill expands the overall framework for state-owned passenger rail. As such, DOT through the Enterprise would have the authority necessary for concluding the acquisition, ownership, construction, operation, maintenance and management of the rail corridors by authorizing the purchase of insurance

---

<sup>7</sup> These restrictions are similar to provisions in the current Florida Transportation Commission statute.

<sup>8</sup> The district secretaries and the executive director of the turnpike enterprise are required to be registered professional engineers, or in lieu of being a professional engineer, may hold an advanced degree in an appropriated related discipline, such as a Masters of Business Administration.

<sup>9</sup> This section relates the procurement of certain professional services.

and establishment of a self-retention fund to insure against liability risks for DOT or other users of the rail corridors. The bill specifically:

- Defines rail corridor and the classes of people DOT intends to allow in the rail corridor. Those classes include passengers, people with the passengers, and people visiting or working in other developments within the corridor (i.e., food stands or kiosks at the station);
- Provides DOT with the authority to enter contracts with a freight operator from whom DOT has acquired a property interest in a rail corridor and provides the parameters DOT must stay within while negotiating terms of the contract;
- Provides that DOT may be solely responsible for any loss, injury or damage to commuter rail passengers, rail corridor invitees or trespassers, regardless of circumstance or cause. DOT may agree to pay for 100 percent of injuries to its passengers, its invitees, and trespassers if an accident occurs, subject to certain parameters:
  - In the event of a limited covered accident, DOT's authority to protect, defend, and indemnify the freight operator for all liability, cost and expense in excess of the deductible or self-insurance retention fund established and in force at the time of the limited coverage accident exists only if the freight operator agrees, with respect to the limited covered accident, to protect, defend and indemnify DOT for the amount of the deductible or self insurance retention fund. The bill defines "limited covered accident" as "a collision directly between trains, locomotives, rail cars, or rail equipment of the department and the freight rail operator only, where the collision is caused by or arising from the willful misconduct of the freight rail operator or its subsidiaries, its agents, licensees, employees, officers, or directors or where punitive damages or exemplary damages are awarded due to the conduct of the freight rail operator or its subsidiaries, its agents, licensees, employees, officers, or agents."
  - Provides that if only one train is involved in an incident, DOT may be solely responsible for any loss, injury or damage, if the train is a DOT train, or a train other than a DOT or freight rail operator's train. However, if in an instance when only a freight rail operator's train is involved, including incidents with trespassers or at grade crossings, the freight rail operator is solely responsible for any loss, injury, or damage, except for commuter rail passengers, and rail corridor invitees.
  - Provides that if any train involved in an accident that is not a DOT train or freight operator train (other train), that train may be treated as if it is a DOT train when determining the allocation of liability between DOT and the freight operator;
  - Provides that when more than one train is involved in an incident:
    - If a DOT train (or other train treated as a DOT train), and a freight operator train are involved in an incident, DOT may be responsible for its property and all of its people, all commuter rail passengers, rail corridor invitees, but only if the freight rail operator is responsible for its property, all of its people, and DOT and the freight rail operator each share one-half responsibility as to trespassers or third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident.
    - If a DOT train, a freight operator train and any other train are all involved in an incident, the freight operator and DOT would still pay 100 percent of the damages to its property and people on their respective trains and DOT pays 100 percent of its property, passengers and people in the corridor. DOT and the freight operator would be equally responsible for damages to people and property outside the corridor. Any payment by the non-DOT/non-freight operator

to those injured or damaged outside of the rail corridor does not reduce the equal sharing responsibility of the freight operator to below one-third of the total third party loss.

- Provides that no contractual duty extends DOT's liability in scope and in effect beyond the contractual liability insurance and the self-insurance retention fund.
- Provides that the freight-rail operator's compensation to DOT for use of the rail corridor includes a monetary contribution to the cost of liability coverage for the sole benefit of the freight rail operator.
- Authorizes DOT to purchase \$200 million in liability insurance and establish the self-insurance retention fund for payment of the deductible limits of insurance, for several types of users of the rail corridor, and includes a provision that any of the parties covered under the insurance shall contribute to the cost of the insurance.
- Authorizes DOT to establish a self-insurance retention fund of up to \$10 million.
- Provides that neither the assumption by contract to protect, defend, indemnify, and hold harmless, the purchase of insurance, nor the establishment of a self-insurance retention fund is a waiver of sovereign immunity or deemed to increase the limits of DOT's or a governmental entity's liability for torts under current law.

#### Impacts of Additional Freight on Local Communities

The bill addresses rail planning and impacts to local communities of additional freight traffic due to implementation of passenger rail. Specifically, the bill:

- Provides that the rail system plan may contain detailed regional components, consistent with the regional transportation plans, as needed to ensure connectivity within the state's regions, and include regional needs in the plan.
- Revises the updating requirement for the rail plan from at least every two years to at least every five years, beginning with an update by January 1, 2011. The rail plan must be accompanied by a status report to the Legislature.
- Recognizes DOT's role in the enhancement of the state's rail system to improve freight and passenger mobility, and requires DOT to:
  - Work closely with all affected communities along an impacted freight rail corridor to identify and address anticipated impacts of increased freight rail traffic due to the implementation of passenger rail.
  - Work with the impacted local governments and CSX Transportation Company to finalize all viable alternatives from DOT's Rail Traffic Evaluation Study to identify and develop an alternative route for through-freight rail traffic moving through Central Florida, including Polk and Hillsborough counties that would address, to the extent practicable, the effects of commuter rail.
  - Requires DOT to provide technical assistance to a coalition of local governments in Central Florida, to develop a regional rail system plan that addresses passenger and freight opportunities in the region. This plan is to be consistent with the Florida Rail System Plan and the Long Range Transportation Plans of the impacted counties, incorporates appropriate elements of the Tampa Bay Area Regional Authority Master Plan, the Metroplan Orlando Regional Transit System Concept Plan, including the SunRail project, and the Florida Department of Transportation Alternate Rail Traffic Evaluation. The coalition includes Brevard, Citrus, Hernando, Hillsborough, Lake,

Marion, Orange, Osceola, Pasco, Pinellas, Polk, Manatee, Sarasota, Seminole, Sumter, and Volusia counties and the municipalities within those counties. The regional rail system plan may include the design and implementation of a multi-use corridor.

### High Speed Rail

The bill authorizes the Florida Rail Enterprise to develop a high speed rail system in Florida. Portions of existing law relating to the, Florida High-Speed Rail Authority Act<sup>10</sup> are reassigned to the Enterprise and all references to the authority” are amended to reference the “enterprise.” Unnecessary provisions of the Florida High-Speed Rail Authority Act are repealed.

Section 341.8203, F.S., provides definitions, and amends the definition of “high speed rail system” to remove the reference to the speed of 120 miles per hour and change it to reasonably expected to reach 110 miles per hour, in order to conform with the federal definition, and to include associated intermodal connectors.

Section 341.822, F.S., is significantly rewritten to provide the powers and duties of the Enterprise relating to high speed rail.

- The enterprise will have the power to locate, plan, design, finance, construct, maintain, own, operate, administer, and manage the state’s high-speed rail system. These powers include, but are not limited to, the ability to plan, construct, maintain, repair, and operate a high-speed rail system and to coordinate the development and operation of a publicly-funded passenger rail system in the state.<sup>11</sup>
- Is the intention of the Florida Rail Enterprise Act that the enterprise be authorized to plan, develop, own, purchase, lease, or otherwise, acquire, demolish, construct, improve, relocate, equip, repair, maintain, operate, and manage the high-speed rail system; to expend funds to publicize, advertise, and promote the advantages of using the high-speed rail system and its facilities; and to cooperate, coordinate, partner, and contract with other entities, public and private.
- Authorizes the enterprise to employ procurement methods available to the Department of Management Services under chs. 255, 287, 334, and 337, F.S.,<sup>12</sup> or otherwise allowed by law. The enterprise may also solicit proposals and, with legislative approval as evidenced by approval of the project in DOT’s work program, enter into agreements with private entities, or consortia thereof, for the building, operation, ownership, or financing of the high-speed rail system.
- Requires the executive director of the enterprise to appoint a staff, who will be exempt from the career service system.<sup>13</sup>
- Provides that the powers conferred upon the enterprise under this act are in addition to and supplemental to the existing powers of DOT and the rail enterprise, and these powers are not to

---

<sup>10</sup> SS. 341.8201 through 341.842, F.S.

<sup>11</sup> These powers and duties are based on those given to Florida’s Turnpike Enterprise.

<sup>12</sup> Chapter 255, F.S., related to public property and publically owned building; Chapter 287, F.S., relates to procurement of personal property and services; Chapter 334, F.S., relates to transportation administration; and Chapter 337, F.S. relates to contracting, acquisition, disposal, and use of property by DOT

<sup>13</sup> Part II of Ch. 110, F.S.

be construed as repealing any other law, but supersede other laws that are inconsistent with this act and provide a complete method for the exercise of such powers.

- Requires any rail enterprise project or improvement to be developed in accordance with the Florida Transportation Plan and be included in DOT's work program.

The bill creates s. 341.8225, F.S., providing that DOT is the only governmental entity that may acquire, construct, maintain, or operate the high-speed rail system, except upon specific authorization from the Legislature. The bill also provides that local governmental entities<sup>14</sup> may negotiate with DOT for the design, right-of-way acquisition, and construction of any component of the high-speed rail system within areas of their respective jurisdictions or within counties with which they have interlocal agreements.

The bill amends s. 341.836, F.S., related to associated development to remove the requirement that the associated development have pedestrian ingress and egress from the rail station.

The bill amends s. 341.838, F.S., which authorized the authority to set various rents, fees, and charges. The bill authorizes the enterprise to establish fares, rates, rents, fees, and other charges. The bill removes the ability to pay administrative expenses of the enterprise from these revenues. It also clarifies that revenues received are not subject to the supervision or regulation of another department.

#### Repeal of Current Law Relating to the High Speed Rail Authority Act

The bill **repeals** the following sections, which are obsolete under the new framework.

1. Section 341.8202, F.S., relating to legislative intent. This contains the legislative intent for the Florida High-Speed Rail Authority.
2. Section 341.821, F.S., creating the high-speed rail authority. This section provides for the membership of the authority, terms of office, and assigned the authority to DOT for administrative purposes.
3. Section 341.823, F.S., providing criteria for assessment and recommendations for the high-speed rail system.
4. Section 341.824, F.S., relating to technical, scientific, or other assistance.
5. Section 341.827, F.S., relating to service areas and segment designations.
6. Section. 341.828, F.S., relating to permitting.
7. Section 341.829, F.S., relating to conflict prevention, mitigation, and resolution
8. Section 341.830, F.S., relating to procurement.
9. Section 341.831, F.S., relating to prequalification.
10. Section 341.832, F.S., relating to request for qualifications
11. Section 341.823, F.S., relating to request for proposals.
12. Section 341.834, F.S., relating to award of contract.
13. Section 341.835, F.S., relating to the acquisition of property, rights-of-way, and the disposal of land.
14. Section 341.837, F.S., relating the payment of expenses by the authority.
15. Section 341.841, F.S., relating to a report and financial audit by the authority.

#### **Rail Funding**

---

<sup>14</sup> The bill provides that it is local government entities as defined in s. 334.03(14). This defines "local government entities" as "a unit of government with less than statewide jurisdiction, or any officially designated public agency or authority of such a unit of government, that has the responsibility for planning, construction, operation, or maintenance of, or jurisdiction over, a transportation facility; the term includes, but is not limited to, a county, an incorporated municipality, a metropolitan planning organization, an expressway or transportation authority, a road and bridge district, a special road and bridge district, and a regional governmental unit."

## Dedicated Funding for State Owned Passenger Rail Systems

The bill establishes a dedicated funding source for state owned passenger rail systems by reallocating a portion of the documentary stamp tax proceeds currently distributed to the State Transportation Trust fund. The bill also establishes the uses of these funds for rail projects. Finally, the bill provides additional funding to the SFRTA for operations.

### Documentary Stamp Taxes

The documentary stamp tax is actually two taxes imposed on different bases at different tax rates. The tax on deeds and other documents related to real property is at the rate of 70 cents per \$100. Certificates of indebtedness, promissory notes, wage assignments and retail charge account agreements are taxed at 35 cents per \$100.

The revenues from the documentary stamp tax are distributed to a variety of funds within the state. Eight percent of total collections are deducted as General Revenue service charge. Distributions are then made as follows:

- 63.31 percent as follows:
  - Debt service for Preservation 2000, Florida Forever, and Everglades Restoration.
  - Of the remainder:
    - **Lesser of 38.2 percent or \$541.75 million in each fiscal year, to the State Transportation Trust Fund**
    - The remaining 61.8 percent of the funds following the initial allocation to Florida Forever and Everglades Restoration is allocated to other various trust funds and General Revenue.

The allocation to the State Transportation Trust Fund (STTF) is allocated as follows:

- 10 percent for capital funding for the New Starts Transit Program
- 75 percent of the remaining funds after the New Starts and Small County allocations for the Strategic Intermodal System
- **5 percent for the Small County Outreach Program (SCOP).**
- **25 percent remaining funds after the New Starts and Small County allocations to the Transportation Regional Incentive Program (TRIP).**

The bill amends provisions of s. 201.15(1)(c), F.S., relating to the distribution of Documentary Stamp taxes allocated to the State Transportation Trust Fund (STTF). Specifically, the bill redistributes the allocation of SCOP and TRIP funds beginning in fiscal year 2014-2015 as described below:

### Small County Outreach Program

Section 339.2818, F.S., creates Small County Outreach Program (SCOP) within DOT to assist small county governments in resurfacing or reconstructing county roads, or in capacity or safety improvements to county roads. Counties with a population of 150,000 or less are eligible to compete for funds designated for this program. For projects on county roads funded by the SCOP program, DOT funds 75 percent of the cost and the county funds the remaining 25 percent. In order to receive funds, the project must be on a county road, and the county must attempt to keep county roads in satisfactory condition.

Effective July 1, 2014, the bill increases the funds allocated to (SCOP) from 5 percent to 10 percent of these revenues.



## Transportation Regional Incentive Program

The Transportation Regional Incentive Program (TRIP) was created in 2005 as part of major Growth Management legislation. The purpose of the program is to encourage regional planning by providing state matching funds for improvements to regionally significant transportation facilities identified and prioritized by regional partners. TRIP funds are to be used to match local or regional funds on a 50 percent/50 percent basis or to match up to 50 percent of the total project costs for public transportation projects. TRIP funds are distributed to the FDOT Districts based on a statutory formula of equal parts population and fuel tax collections.

Effective on July 1, 2014, the bill provides that the first \$60 million of documentary stamp tax revenues allocated to the Transportation Regional Incentive Program is allocated to the Florida Rail Enterprise for certain rail funding.

### Use of State Funds for Rail Projects

Section 341.303(4)(a), F.S., authorizes DOT to fund up to 50 percent of the net operating costs of any eligible intercity or commuter rail service development project that is local in scope, not to exceed the local match.

The bill substantially revises this section to authorize DOT to fund up to 100 percent of the net operating costs<sup>15</sup> for any intercity or commuter rail system, for up to seven years, beginning when the system is open to service. The bill authorizes DOT through the Florida Rail Enterprise to use the allocation of documentary stamp revenues dedicated to rail through the TRIP program, up to \$60 million per year, to fund the following:

- Up to 50 percent of the nonfederal share of the costs of any eligible passenger rail capital improvement project.
- Up to 100 percent of planning and development costs related to the provision of a passenger rail system.
- The high-speed rail system
- Projects necessary to identify or address anticipated impacts of increased freight rail traffic resulting from the implementation of state owned passenger rail.

### Funding for South Florida Regional Transportation Authority

Current law requires each of the three counties in Tri-Rail's service area to contribute \$2.67 million every year to fund Tri-Rail,<sup>16</sup> plus an additional \$1.565 million for operating expenses.

The bill continues to require these local revenues, and clarifies that the \$2.67 million annually provided by the counties may be used for capital, operations, and maintenance.

In its negotiations with CSX for SunRail, DOT renegotiated the terms of the South Florida Operating & Maintenance Agreement (SFOMA) to establish full operations control of the South Florida Rail Corridor by SFRTA. This agreement increases the charges assessed to CSX for freight use within the corridor, while giving control of all the operations and maintenance of the corridor to SFRTA.<sup>17</sup>

---

<sup>15</sup> The statutory meaning of "net operating costs" is "all operating costs of the project less any federal funds, fares, or other sources of income for the project."

<sup>16</sup> While this has historically been used for capital expenses, the statute is silent as to what it may be used for.

<sup>17</sup> Under the original agreement for Tri-Rail, CSX retained maintenance and dispatch control of the corridor.

The bill requires DOT, effective July 1, 2010, to transfer from the STTF, the following amounts to SFRTA.

- If SFRTA becomes responsible for operating, maintaining, and dispatching the rail corridor, \$15 million for operations, maintenance, and dispatch and an amount no less than DOT's commitments for fiscal year 2010-2011, as of July 1, 2009, for operating assistance, corridor track maintenance, and contract maintenance.
- If SFRTA does not become responsible for operating, maintaining, and dispatching the rail corridor, \$13.3 million for operations, maintenance, and dispatch and an amount no less than DOT's commitments for fiscal year 2010-2011, as of July 1, 2009, for operating assistance, corridor track maintenance, and contract maintenance.

The bill provides that the additional funds provided to the SFRTA shall be allocated from the first proceeds of the increased revenues to be deposited into the State Transportation Trust Fund estimated by the November 2009 Transportation Revenue Estimating Conference. Specifically, the bill notwithstanding the following statutory distributions to ensure that the transfer of such funds shall not negatively impact projects included in the fiscal years 2009-2010 through 2013-2014 transportation work program:

- Minimum 15 percent to Public Transportation Projects (s. 206.46(3), F.S.)
- Minimum 1.5 percent for Highway Beautification Projects (s. 334.044(26), F.S.)
- District Statutory Formula based on 50 percent population and 50 percent fuel tax collections (s. 339.135(4)(a)1., F.S.)
- Minimum 50 percent for the Strategic Intermodal System (s. 339.135(4)(a)2., F.S.)

Further, the bill provides that these dedicated funds to the SFRTA may not be provided from the documentary stamp tax distribution to the Florida Rail Enterprise for rail programs.

#### Purchase of the Central Florida Rail Corridor (SunRail)

The bill allows DOT to complete an escrowed closing on the pending Central Florida Rail Corridor acquisition. However, the drawing of the escrowed closing shall not occur unless and until Federal Transit Administration full-funding grant agreement approval is obtained for the proposed Central Florida Commuter Rail Transit Project Initial Operating Segment.

#### **Effective Date**

Except as otherwise provided, this act shall take effect upon becoming law.

#### **B. SECTION DIRECTORY:**

- |           |  |
|-----------|--|
| Section 1 | Amends s. 20.23, F.S., relating to the Department of Transportation.                       |
| Section 2 | Amends s. 201.15, F.S., relating to the distribution of documentary stamp taxes collected. |
| Section 3 | Amends. s. 339.153, F.S., relating to DOT's work program.                                  |
| Section 4 | Amends s. 343.58, F.S., relating to county funding for SFRTA.                              |
| Section 5 | Amends. s. 341.301, F.S., providing definitions for rail.                                  |
| Section 6 | Amends s. 341.302, F.S., relating to the rail program.                                     |
| Section 7 | Provides conditions on an escrowed closing for SunRail.                                    |

- Section 8 Amends s. 341.303, F.S., relating to funding authorizations and appropriations.
- Section 9 Amends. s. 341.8201, F.S., providing a short title.
- Section 10 Repeals s. 341.8202, F.S., relating to the Florida High Speed Rail Authority.
- Section 11 Amends. s. 341.8203, F.S., providing definitions.
- Section 12 Repeals s. 341.821, F.S., relating to the Florida High-Speed Rail Authority.
- Section 13 Amends s. 384.822, F.S., relating to the powers and duties of the enterprise.
- Section 14 Creates s. 341.8225, F.S., relating to DOT's authority to acquire, construct, or operate a high-speed rail system.
- Section 15 Repeals ss. 341.823, 341.824, 341.827, 341.828, 341.829, 341.830, 341.831, 341.832, 341.833, 341.834, and 341.835, F.S., relating to the Florida High-Speed Rail Authority.
- Section 16 Amends s. 341.836, F.S. relating to associated development.
- Section 17 Repeals s. 341.837, F.S., relating to the Florida High-Speed Rail Authority.
- Section 18 Amends. s. 341.838, F.S., relating to fares, rates, rents, fees, and charges.
- Section 19 Amends. s. 341.839, F.S., relating to alternative means.
- Section 20 Repeals s. 341.841, F.S., relating to the Florida High-Speed Rail Authority.
- Section 21 Amends s. 110.205, F.S., relating to career service exemptions, to conform.
- Section 22 Provides an effective date.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

The bill will generate an indeterminate amount of revenues for DOT related to passenger and freight user fees in rail corridors owned by DOT. However, DOT will not receive any passenger fees until commuter rail begins operation.

#### **2. Expenditures:**

The bill authorizes DOT to purchase \$200 million in liability insurance related to a commuter rail corridor the department owns. The annual premium is expected to be approximately \$2 million, which is currently included in DOT's five-year work program. However, if the insurance coverage includes entities such as freight rail operators and ancillary development, any party covered by the policy is required to provide a reasonable monetary contribution for the insurance. These additional insureds may offset part of DOT's cost for liability insurance coverage.

The bill allocates a portion of the additional revenues estimated by the November 2009 Transportation Revenue Estimating Conference in the STTF to SFRTA as a dedicated funding source for Tri-Rail. The estimated additional revenues are:

Fiscal Year                      Increase November 2009  
Transportation REC Revenues (In Millions)

2009-2010	\$56.9
2010-2011	\$78.1
2011-2012	\$80.0
2012-2013	\$72.1
2012-2014	\$59.2

If SFRTA assumes responsibility for maintenance and dispatch of the South Florida Rail Corridor, DOT transfers to SFRTA, the first \$15 million of the increased revenues. If SFRTA does not assume responsibility for maintenance and dispatch of the corridor, DOT will transfer the first \$13.3 million of the increased revenues to the authority.

Beginning on July 1, 2014, proceeds of documentary stamp taxes going to the STTF are reallocated. The effect of the reallocation for fiscal year 2014-2015 is as follows:

(Dollars in Millions)

PROGRAM	CURRENT ALLOCATION	AMENDED ALLOCATION	DIFFERENCE
New Starts	\$40.1	\$40.1	\$0
SCOP	\$20.0	\$40.0	\$20.0
Florida Rail Enterprise	\$0.0	\$60.0	\$60.0
TRIP	\$85.1	\$20.0	(\$65.0)
Strategic Intermodal System	\$255.3	\$240.3	(\$15.0)

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

**1. Revenues:**

If SFRTA assumes responsibility for maintenance and dispatch of the South Florida Rail Corridor, DOT transfers to SFRTA, the first \$15 million of the increased revenues estimated by the November 2009 Transportation Revenue Estimating Conference. If SFRTA does not assume responsibility for maintenance and dispatch of the corridor, DOT will transfer the first \$13.3 million of the increased revenues to the authority

Due to the revised allocation of documentary stamp tax proceeds to the State Transportation Trust Fund, the state's small county outreach program is estimated to receive an additional \$20 million in FY 2014-2015.

**2. Expenditures:**

None

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The construction of SunRail or another rail system will potentially create jobs along the rail corridor.

**D. FISCAL COMMENTS:**

According to DOT, if the SunRail commuter rail project is implemented, sufficient funds will be available from a combination of sources to fund the project. These sources include:

- 1) Federal and local sources,
- 2) State funds included in the 5-year work program, and
- 3) Passenger and freight user fee revenues.

If the SunRail project is implemented there would be direct economic benefits to Central Florida related to the construction of the SunRail system and ongoing operations and maintenance of the system. These benefits include job creation, materials purchase, and incremental business activity. Once SunRail is operational, users of the system will receive the benefit of an alternative form of transportation in Central Florida.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

Not applicable because this bill does not: require counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

##### **2. Other:**

None

#### **B. RULE-MAKING AUTHORITY:**

None

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None

### **IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

PCB EDCA 09B-01

ORIGINAL

2009

1                                   A bill to be entitled  
2       An act relating to transportation; amending s. 20.23,  
3       F.S.; creating the Florida Statewide Passenger Rail  
4       Commission to monitor passenger rail systems and  
5       associated operations, advise the Department of  
6       Transportation concerning a statewide system of passenger  
7       rail service, evaluate passenger rail policies, and  
8       provide advice and recommendations to the Legislature on  
9       passenger rail operations in the state; providing for  
10      membership and organization of the commission; authorizing  
11      reimbursement for travel and other expenses of members;  
12      prohibiting the commission and its members from taking  
13      part in operations of the department or a monitored  
14      authority; assigning the commission to the Office of the  
15      Secretary of the department for administrative purposes;  
16      providing that expenses of the commission shall be  
17      approved by the secretary; directing the department to  
18      provide administrative support and services to the  
19      commission; providing for a rail enterprise in the  
20      department to be headed by an executive director and  
21      headquartered in Leon County; providing that the executive  
22      director shall be appointed by the Secretary of  
23      Transportation; directing the secretary to assign to the  
24      executive director the responsibility for funding,  
25      developing, and operating high-speed and passenger rail  
26      systems under specified provisions and coordinating  
27      publicly funded passenger rail operations; exempting the  
28      enterprise from department policies, procedures, and

PCB EDCA 09B-01

ORIGINAL

2009

29 standards; providing exceptions; amending s. 201.15, F.S.;

30 revising allocation of certain moneys in the State

31 Transportation Trust Fund by increasing the percentage to

32 be allocated for purposes of the Small County Outreach

33 Program and providing for an annual allocation to the

34 Florida Rail Enterprise; amending s. 339.135, F.S.;

35 providing a funding source for allocations to the South

36 Florida Regional Transportation Authority under specified

37 provisions; amending s. 343.58, F.S., relating to the

38 South Florida Regional Transportation Authority; providing

39 that funds dedicated by county governments may be used for

40 certain purposes; providing for allocation of funds from

41 the State Transportation Trust Fund to the authority;

42 providing for cessation of the allocation under certain

43 circumstances; amending s. 341.301, F.S.; revising the

44 definition of "railroad" or "rail system" to include a

45 high-speed rail system and providing definitions for

46 purposes of provisions for rail programs; amending s.

47 341.302, F.S.; revising duties and responsibilities of the

48 department to develop and implement a rail program;

49 authorizing the department's rail system plan to include

50 regional components for certain purposes; revising

51 requirements for the plan to be updated; requiring a plan

52 status report to the Legislature; directing the department

53 to work with local communities to address impacts of

54 passenger rail implementation, finalize alternative routes

55 for through freight rail traffic in Central Florida, and

56 provide technical assistance to a coalition of

PCB EDCA 09B-01

ORIGINAL

2009

57 municipalities and counties in Central Florida for  
58 development of a regional rail system plan; providing  
59 parameters within which the department may by contract  
60 indemnify against loss a freight rail operator from whom  
61 it has acquired interest in a rail corridor; authorizing  
62 the department to purchase liability insurance including  
63 coverage for the department, any freight rail operator,  
64 commuter rail service providers, governmental entities, or  
65 any ancillary development and establish a self-insurance  
66 retention fund; limiting the amount of the insurance and  
67 self-insurance retention fund; providing that the insureds  
68 must make payments for the coverage; providing that the  
69 insurance may provide coverage for all damages and be  
70 maintained to provide a fund to cover liabilities arising  
71 from rail corridor ownership and operations; authorizing  
72 the department to incur certain marketing expenses  
73 relating to rail corridor acquisition, ownership,  
74 construction, and operation; providing that  
75 indemnification by contract, the purchase of insurance, or  
76 establishment of a self-insurance retention fund does not  
77 waive sovereign immunity or increase liability limits  
78 provided under specified provisions; providing that  
79 specified provisions apply to the purchase of insurance;  
80 providing that specified provisions relating to rail  
81 service apply to other governmental entities under  
82 contract with the department or designated by the  
83 department; providing for application of specified  
84 provisions to procurement contracts for the construction,



PCB EDCA 09B-01

ORIGINAL

2009

operation, maintenance, and management of a rail corridor by the department, a governmental entity under contract with the department, or a governmental entity designated by the department; authorizing the department to complete an escrowed closing on the Central Florida Rail Corridor acquisition if Federal Transit Administration full-funding grant agreement approval is obtained for the proposed Central Florida Commuter Rail Transit Project Initial Operating Segment; amending s. 341.303, F.S.; revising provisions for distribution of rail funds; removing provisions for funding service development projects; authorizing the department to fund net operating costs of eligible intercity or commuter rail systems for a certain time period; authorizing the department, through the Florida Rail Enterprise, to use specified funds to fund certain costs of passenger rail capital improvement projects, passenger rail planning and development, the high-speed rail system, and projects necessary to identify or address anticipated impacts of increased freight rail traffic due to implementing passenger rail systems; providing that the enterprise shall be a single budget entity; providing that the enterprise's budget include all passenger rail funding and be submitted to the Legislature along with the department's budget; directing the Governor to certify forward unexpended funds of the enterprise; providing for use of unencumbered funds certified forward; amending s. 341.8201, F.S.; revising a short title; providing that specified provisions may be cited as the

PCB EDCA 09B-01

ORIGINAL

2009

113        "Florida Rail Enterprise Act"; amending s. 341.8203, F.S.;

114        providing definitions for purposes of such act; amending

115        s. 341.822, F.S.; providing powers and duties of the

116        enterprise in addition to the powers and duties of the

117        department; authorizing the enterprise to plan, construct,

118        maintain, repair, operate, and promote a high-speed rail

119        system, to acquire corridors, and to coordinate the

120        development and operation of publicly funded passenger

121        rail systems; providing intent; authorizing the enterprise

122        to cooperate, coordinate, partner, and contract with other

123        entities to accomplish its purposes; authorizing the

124        enterprise to employ certain procurement methods;

125        authorizing the executive director to employ staff;

126        providing that such staff are exempt from specified Career

127        Service System provisions; providing for construction;

128        providing that provisions for powers of the enterprise

129        supersede other laws that are inconsistent; requiring rail

130        enterprise projects or improvements to be developed in

131        accordance with the Florida Transportation Plan and the

132        department's work program; creating s. 341.8225, F.S.;

133        providing that only the department may acquire, construct,

134        maintain, or operate the high-speed rail system; providing

135        for an exception with legislative authorization;

136        authorizing local governmental entities to negotiate with

137        the department for the design, right-of-way acquisition,

138        and construction of components of the system; amending s.

139        341.836, F.S.; providing for the enterprise to undertake

140        associated developments for certain purposes; amending s.

PCB EDCA 09B-01

ORIGINAL

2009

341.838, F.S.; authorizing the enterprise to establish and collect fares, rates, and other charges for services provided by the system; authorizing the enterprise to contract with other entities; directing the enterprise to review the fares, rates, and other charges annually; providing for use of moneys collected; providing that such fares, rates, and other charges are not subject to supervision or regulation by other entities; amending s. 341.839, F.S.; providing for construction of provisions granting powers to the enterprise; removing provisions relating to the Florida High-Speed Rail Authority; repealing ss. 341.8202, 341.821, 341.823, 341.824, 341.827, 341.828, 341.829, 341.830, 341.831, 341.832, 341.833, 341.834, 341.835, 341.837, and 341.841, F.S., relating to the Florida High-Speed Rail Authority, legislative findings and intent, criteria for assessment and recommendations, technical, scientific, or other assistance, service areas, segment designation, permitting, conflict prevention, mitigation, and resolution, procurement, prequalification, request for qualifications, request for proposals, award of contract, acquisition of property, rights-of-way, and disposal of land, payment of expenses, and reports and audits; amending s. 110.205, F.S.; conforming cross-references; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

PCB EDCA 09B-01

ORIGINAL

2009

Section 1. Paragraph (b) of subsection (2) and present subsection (4) of section 20.23, Florida Statutes, are amended, present subsections (3) through (6) are renumbered as subsections (4) through (7), respectively, and a new subsection (3) is added to that section, to read:

20.23 Department of Transportation.—There is created a Department of Transportation which shall be a decentralized agency.

(2)

(b) The commission shall have the primary functions to:

1. Recommend major transportation policies for the Governor's approval, and assure that approved policies and any revisions thereto are properly executed.

2. Periodically review the status of the state transportation system including highway, transit, rail, seaport, intermodal development, and aviation components of the system and recommend improvements therein to the Governor and the Legislature.

3. Perform an in-depth evaluation of the annual department budget request, the Florida Transportation Plan, and the tentative work program for compliance with all applicable laws and established departmental policies. Except as specifically provided in s. 339.135(4)(c)2., (d), and (f), the commission may not consider individual construction projects, but shall consider methods of accomplishing the goals of the department in the most effective, efficient, and businesslike manner.

4. Monitor the financial status of the department on a regular basis to assure that the department is managing revenue

PCB EDCA 09B-01

ORIGINAL

2009

197 and bond proceeds responsibly and in accordance with law and  
198 established policy.

199       5. Monitor on at least a quarterly basis, the efficiency,  
200 productivity, and management of the department, using  
201 performance and production standards developed by the commission  
202 pursuant to s. 334.045.

203       6. Perform an in-depth evaluation of the factors causing  
204 disruption of project schedules in the adopted work program and  
205 recommend to the Legislature and the Governor methods to  
206 eliminate or reduce the disruptive effects of these factors.

207       7. Recommend to the Governor and the Legislature  
208 improvements to the department's organization in order to  
209 streamline and optimize the efficiency of the department. In  
210 reviewing the department's organization, the commission shall  
211 determine if the current district organizational structure is  
212 responsive to Florida's changing economic and demographic  
213 development patterns. The initial report by the commission must  
214 be delivered to the Governor and Legislature by December 15,  
215 2000, and each year thereafter, as appropriate. The commission  
216 may retain such experts as are reasonably necessary to  
217 effectuate this subparagraph, and the department shall pay the  
218 expenses of such experts.

219       8. Monitor the efficiency, productivity, and management of  
220 the authorities created under chapters ~~343~~, 348, and 349,  
221 including any authority formed using the provisions of part I of  
222 chapter 348 and any authority formed under chapter 343 which is  
223 not monitored under subsection (3). The commission shall also  
224 conduct periodic reviews of each authority's operations and

PCB EDCA 09B-01

ORIGINAL

2009

225 budget, acquisition of property, management of revenue and bond  
226 proceeds, and compliance with applicable laws and generally  
227 accepted accounting principles.

228 (3) There is created the Florida Statewide Passenger Rail  
229 Commission.

230 (a)1. The commission shall consist of nine voting members  
231 appointed as follows:

232 a. Three members shall be appointed by the Governor, one  
233 of whom must have a background in the area of environmental  
234 concerns, one of whom must have a legislative background, and  
235 one of whom must have a general business background.

236 b. Three members shall be appointed by the President of  
237 the Senate, one of whom must have a background in civil  
238 engineering, one of whom must have a background in  
239 transportation construction, and one of whom must have a general  
240 business background.

241 c. Three members shall be appointed by the Speaker of the  
242 House of Representatives, one of whom must have a legal  
243 background, one of whom must have a background in financial  
244 matters, and one of whom must have a general business  
245 background.

246 2. The initial term of each member appointed by the  
247 Governor shall be for 4 years. The initial term of each member  
248 appointed by the President of the Senate shall be for 3 years.  
249 The initial term of each member appointed by the Speaker of the  
250 House of Representatives shall be for 2 years. Succeeding terms  
251 for all members shall be for 4 years.

252 3. A vacancy occurring during a term shall be filled by

PCB EDCA 09B-01

ORIGINAL

2009

the respective appointing authority in the same manner as the original appointment and only for the balance of the unexpired term. An appointment to fill a vacancy shall be made within 60 days after the occurrence of the vacancy.

4. The commission shall elect one of its members as chair of the commission. The chair shall hold office at the will of the commission. Five members of the commission shall constitute a quorum, and the vote of five members shall be necessary for any action taken by the commission. The commission may meet upon the constitution of a quorum. A vacancy in the commission does not impair the right of a quorum to exercise all rights and perform all duties of the commission.

5. The members of the commission are not entitled to compensation but are entitled to reimbursement for travel and other necessary expenses as provided in s. 112.061.

(b) The commission shall have the primary functions of:

1. Monitoring the efficiency, productivity, and management of all publicly funded passenger rail systems in the state, including, but not limited to, any authority created under chapter 343, chapter 349, or chapter 163 if the authority receives public funds for the provision of passenger rail service. The commission shall advise each monitored authority of its findings and recommendations. The commission shall also conduct periodic reviews of each monitored authority's passenger rail and associated transit operations and budget, acquisition of property, management of revenue and bond proceeds, and compliance with applicable laws and generally accepted accounting principles. The commission may seek the assistance of

PCB EDCA 09B-01

ORIGINAL

2009

the Auditor General in conducting such reviews and shall report the findings of such reviews to the Legislature. This paragraph does not preclude the Florida Transportation Commission from conducting its performance and work program monitoring responsibilities.

2. Advising the department on policies and strategies used in planning, designing, building, operating, financing, and maintaining a coordinated statewide system of passenger rail services.

3. Evaluating passenger rail policies and providing advice and recommendations to the Legislature on passenger rail operations in the state.

(c) The commission or a member of the commission may not enter into the day-to-day operation of the department or a monitored authority and is specifically prohibited from taking part in:

1. The awarding of contracts.

2. The selection of a consultant or contractor or the prequalification of any individual consultant or contractor. However, the commission may recommend to the secretary standards and policies governing the procedure for selection and prequalification of consultants and contractors.

3. The selection of a route for a specific project.

4. The specific location of a transportation facility.

5. The acquisition of rights-of-way.

6. The employment, promotion, demotion, suspension, transfer, or discharge of any department personnel.

7. The granting, denial, suspension, or revocation of any



PCB EDCA 09B-01

ORIGINAL

2009

license or permit issued by the department.

(d) The commission is assigned to the Office of the Secretary of the Department of Transportation for administrative and fiscal accountability purposes, but it shall otherwise function independently of the control and direction of the department except that reasonable expenses of the commission shall be subject to approval by the Secretary of Transportation. The department shall provide administrative support and service to the commission.

(5)~~(4)~~(a) The operations of the department shall be organized into seven districts, each headed by a district secretary, and a turnpike enterprise and a rail enterprise, each enterprise headed by an executive director. The district secretaries and the ~~turnpike~~ executive directors ~~director~~ shall be registered professional engineers in accordance with the provisions of chapter 471 or, in lieu of professional engineer registration, a district secretary or ~~turnpike~~ executive director may hold an advanced degree in an appropriate related discipline, such as a Master of Business Administration. The headquarters of the districts shall be located in Polk, Columbia, Washington, Broward, Volusia, Miami-Dade, and Hillsborough Counties. The headquarters of the turnpike enterprise shall be located in Orange County. The headquarters of the rail enterprise shall be located in Leon County. In order to provide for efficient operations and to expedite the decisionmaking process, the department shall provide for maximum decentralization to the districts.

(b) Each district secretary may appoint up to three

PCB EDCA 09B-01

ORIGINAL

2009

337 district directors or, until July 1, 2005, each district  
338 secretary may appoint up to four district directors. These  
339 positions are exempt from part II of chapter 110.

340 (c) Within each district, offices shall be established for  
341 managing major functional responsibilities of the department.  
342 The heads of these offices shall be exempt from part II of  
343 chapter 110.

344 (d) The district director for the Fort Myers Urban Office  
345 of the Department of Transportation is responsible for  
346 developing the 5-year Transportation Plan for Charlotte,  
347 Collier, DeSoto, Glades, Hendry, and Lee Counties. The Fort  
348 Myers Urban Office also is responsible for providing policy,  
349 direction, local government coordination, and planning for those  
350 counties.

351 (e)1. The responsibility for the turnpike system shall be  
352 delegated by the secretary to the executive director of the  
353 turnpike enterprise, who shall serve at the pleasure of the  
354 secretary. The executive director shall report directly to the  
355 secretary, and the turnpike enterprise shall operate pursuant to  
356 ss. 338.22-338.241.

357 2. To facilitate the most efficient and effective  
358 management of the turnpike enterprise, including the use of best  
359 business practices employed by the private sector, the turnpike  
360 enterprise, except as provided in s. 287.055, shall be exempt  
361 from departmental policies, procedures, and standards, subject  
362 to the secretary having the authority to apply any such  
363 policies, procedures, and standards to the turnpike enterprise  
364 from time to time as deemed appropriate.

PCB EDCA 09B-01

ORIGINAL

2009

365        (f)1. The responsibility for developing and operating the  
366 high-speed and passenger rail systems established in chapter  
367 341, directing funding for passenger rail systems under s.  
368 341.303, and coordinating publicly funded passenger rail  
369 operations in the state, including freight rail interoperability  
370 issues, shall be delegated by the secretary to the executive  
371 director of the rail enterprise, who shall serve at the pleasure  
372 of the secretary. The executive director shall report directly  
373 to the secretary, and the rail enterprise shall operate pursuant  
374 to ss. 341.8201-341.842.

375        2. To facilitate the most efficient and effective  
376 management of the rail enterprise, including the use of best  
377 business practices employed by the private sector, the rail  
378 enterprise, except as provided in s. 287.055, shall be exempt  
379 from departmental policies, procedures, and standards, subject  
380 to the secretary having the authority to apply any such  
381 policies, procedures, and standards to the rail enterprise from  
382 time to time as deemed appropriate.

383        Section 2. Paragraph (c) of subsection (1) of section  
384 201.15, Florida Statutes, as amended by chapters 2009-21 and  
385 2009-68, Laws of Florida, is amended to read:

386        201.15 Distribution of taxes collected.—All taxes  
387 collected under this chapter are subject to the service charge  
388 imposed in s. 215.20(1). Prior to distribution under this  
389 section, the Department of Revenue shall deduct amounts  
390 necessary to pay the costs of the collection and enforcement of  
391 the tax levied by this chapter. Such costs and the service  
392 charge may not be levied against any portion of taxes pledged to

PCB EDCA 09B-01

ORIGINAL

2009

debt service on bonds to the extent that the costs and service charge are required to pay any amounts relating to the bonds. After distributions are made pursuant to subsection (1), all of the costs of the collection and enforcement of the tax levied by this chapter and the service charge shall be available and transferred to the extent necessary to pay debt service and any other amounts payable with respect to bonds authorized before January 1, 2010, secured by revenues distributed pursuant to subsection (1). All taxes remaining after deduction of costs and the service charge shall be distributed as follows:

(1) Sixty-three and thirty-one hundredths percent of the remaining taxes shall be used for the following purposes:

(c) After the required payments under paragraphs (a) and (b), the remainder shall be paid into the State Treasury to the credit of:

1. The State Transportation Trust Fund in the Department of Transportation in the amount of the lesser of 38.2 percent of the remainder or \$541.75 million in each fiscal year, to be used for the following specified purposes, notwithstanding any other law to the contrary:

a. For the purposes of capital funding for the New Starts Transit Program, authorized by Title 49, U.S.C. s. 5309 and specified in s. 341.051, 10 percent of these funds;

b. For the purposes of the Small County Outreach Program specified in s. 339.2818, 5 percent of these funds. Effective July 1, 2014, the percentage allocated under this subparagraph shall be increased to 10 percent;

c. For the purposes of the Strategic Intermodal System

PCB EDCA 09B-01

ORIGINAL

2009

specified in ss. 339.61, 339.62, 339.63, and 339.64, 75 percent of these funds after allocating for the New Starts Transit Program described in sub-subparagraph a. and the Small County Outreach Program described in sub-subparagraph b.; and

d. For the purposes of the Transportation Regional Incentive Program specified in s. 339.2819, 25 percent of these funds after allocating for the New Starts Transit Program described in sub-subparagraph a. and the Small County Outreach Program described in sub-subparagraph b. Effective July 1, 2014, the first \$60 million of the funds allocated pursuant to this sub-subparagraph shall be allocated annually to the Florida Rail Enterprise for the purposes established in s. 341.303(5).

2. The Grants and Donations Trust Fund in the Department of Community Affairs in the amount of the lesser of .23 percent of the remainder or \$3.25 million in each fiscal year, with 92 percent to be used to fund technical assistance to local governments and school boards on the requirements and implementation of this act and the remaining amount to be used to fund the Century Commission established in s. 163.3247.

3. The Ecosystem Management and Restoration Trust Fund in the amount of the lesser of 2.12 percent of the remainder or \$30 million in each fiscal year, to be used for the preservation and repair of the state's beaches as provided in ss. 161.091-161.212.

4. General Inspection Trust Fund in the amount of the lesser of .02 percent of the remainder or \$300,000 in each fiscal year to be used to fund oyster management and restoration programs as provided in s. 379.362(3).

PCB EDCA 09B-01

ORIGINAL

2009

Moneys distributed pursuant to this paragraph may not be pledged for debt service unless such pledge is approved by referendum of the voters.

Section 3. Paragraph (a) of subsection (4) of section 339.135, Florida Statutes, is amended to read:

339.135 Work program; legislative budget request; definitions; preparation, adoption, execution, and amendment.—

(4) FUNDING AND DEVELOPING A TENTATIVE WORK PROGRAM.—

(a)1. To assure that no district or county is penalized for local efforts to improve the State Highway System, the department shall, for the purpose of developing a tentative work program, allocate funds for new construction to the districts, except for the turnpike enterprise, based on equal parts of population and motor fuel tax collections. Funds for resurfacing, bridge repair and rehabilitation, bridge fender system construction or repair, public transit projects except public transit block grants as provided in s. 341.052, and other programs with quantitative needs assessments shall be allocated based on the results of these assessments. The department may not transfer any funds allocated to a district under this paragraph to any other district except as provided in subsection (7). Funds for public transit block grants shall be allocated to the districts pursuant to s. 341.052. Funds for the intercity bus program provided for under s. 5311(f) of the federal nonurbanized area formula program shall be administered and allocated directly to eligible bus carriers as defined in s. 341.031(12) at the state level rather than the district. In

PCB EDCA 09B-01

ORIGINAL

2009

order to provide state funding to support the intercity bus program provided for under provisions of the federal 5311(f) program, the department shall allocate an amount equal to the federal share of the 5311(f) program from amounts calculated pursuant to s. 206.46(3).

2. Notwithstanding the provisions of subparagraph 1., the department shall allocate at least 50 percent of any new discretionary highway capacity funds to the Florida Strategic Intermodal System created pursuant to s. 339.61. Any remaining new discretionary highway capacity funds shall be allocated to the districts for new construction as provided in subparagraph 1. For the purposes of this subparagraph, the term "new discretionary highway capacity funds" means any funds available to the department above the prior year funding level for capacity improvements, which the department has the discretion to allocate to highway projects.

3. Notwithstanding subparagraph 1. and ss. 206.46(3), 334.044(26), and 339.2819(3), and for the 2009-2010 fiscal year only, the department shall reduce work program levels to balance the finance plan to the revised funding levels resulting from any reduction in the 2009-2010 General Appropriations Act. This subparagraph expires July 1, 2010.

4. For the 2009-2010 fiscal year only, prior to any project or phase thereof being deferred, the department's cash balances shall be as provided in paragraph (6)(b), and the reductions in subparagraph 3. shall be made to financial projects not programmed for contract letting as identified with a work program contract class code 8 and the box code RV. These

PCB EDCA 09B-01

ORIGINAL

2009

reductions shall not negatively impact safety or maintenance or project contingency percentage levels as of April 21, 2009. This subparagraph expires July 1, 2010.

5. Notwithstanding subparagraphs 1. and 2. and ss. 206.46(3) and 334.044(26), and for fiscal years 2009-2010 through 2013-2014 only, the department shall allocate the first proceeds of the increased revenues to be deposited into the State Transportation Trust Fund estimated by the November 2009 Revenue Estimating Conference to provide for the transfer of funds included in s. 343.58(4). The transfer of funds included in s. 343.58(4) may not negatively impact projects included in fiscal years 2009-2010 through 2013-2014 of the work program as of July 1, 2009, as amended pursuant to subsection (7). This subparagraph expires July 1, 2014.

Section 4. Section 343.58, Florida Statutes, is amended to read:

343.58 County funding for the South Florida Regional Transportation Authority.—

(1) Each county served by the South Florida Regional Transportation Authority must dedicate and transfer not less than \$2.67 million to the authority annually. The recurring annual \$2.67 million must be dedicated by the governing body of each county before October 31 of each fiscal year. These funds may be used for capital, operations, and maintenance.

(2) At least \$45 million of a state-authorized, local option recurring funding source available to Broward, Miami-Dade, and Palm Beach counties is directed to the authority to fund its capital, operating, and maintenance expenses. The



PCB EDCA 09B-01

ORIGINAL

2009

533 funding source shall be dedicated to the authority only if  
534 Broward, Miami-Dade, and Palm Beach counties impose the local  
535 option funding source.

536 (3) In addition, each county shall continue to annually  
537 fund the operations of the South Florida Regional Transportation  
538 Authority in an amount not less than \$1.565 million. Revenue  
539 raised pursuant to this subsection shall also be considered a  
540 dedicated funding source.

541 (4) Notwithstanding any other provision of law to the  
542 contrary and effective July 1, 2010, the department shall  
543 transfer annually from the State Transportation Trust Fund to  
544 the South Florida Regional Transportation Authority the  
545 following:

546 (a)1. If the authority becomes responsible for operating,  
547 maintaining, and dispatching the South Florida Rail Corridor,  
548 \$15 million from the State Transportation Trust Fund to the  
549 South Florida Regional Transportation Authority for operations,  
550 maintenance, and dispatch and an amount no less than the work  
551 program commitments for fiscal year 2010-2011, as of July 1,  
552 2009, for operating assistance to the authority and corridor  
553 track maintenance and contract maintenance for the South Florida  
554 Rail Corridor; or

555 2. If the authority does not become responsible for  
556 operating, maintaining, and dispatching the South Florida Rail  
557 Corridor, \$13.3 million from the State Transportation Trust Fund  
558 to the South Florida Regional Transportation Authority for  
559 operations and maintenance, and an amount no less than the work  
560 program commitments for fiscal year 2010-2011, as of July 1,

PCB EDCA 09B-01

ORIGINAL

2009

2009, for operating assistance to the authority.

(b) Funding required by this subsection may not be provided from the funds dedicated to the Florida Rail Enterprise under s. 201.15(1)(c)1.d.

~~(5)(4)~~ The current funding obligations under subsections (1), ~~and (3)~~, and (4) shall cease upon commencement of the collection of funding from the funding source under subsection (2). If the funding under subsection (2) is discontinued for any reason, the funding obligations under subsections (1) and (3) shall resume when collection from the funding source under subsection (2) ceases. Payment by the counties shall be on a pro rata basis the first year following cessation of the funding under subsection (2). The authority shall refund a pro rata share of the payments for the current fiscal year made pursuant to the current funding obligations under subsections (1) and (3) as soon as reasonably practicable after it begins to receive funds under subsection (2). If, by December 31, 2015, the South Florida Regional Transportation Authority has not received federal matching funds based upon the dedication of funds under subsection (1), subsection (1) shall be repealed.

Section 5. Section 341.301, Florida Statutes, is amended to read:

341.301 Definitions; ss. 341.302-341.303 ~~ss. 341.302 and 341.303~~. As used in ss. 341.302-341.303 ~~ss. 341.302 and 341.303~~, the term:

(1) "Ancillary development" includes any lessee or licensee of the department, including other governmental entities, vendors, retailers, restaurateurs, or contract service

PCB EDCA 09B-01

ORIGINAL

2009

589 providers, within a department-owned rail corridor, except for  
590 providers of commuter rail service, intercity rail passenger  
591 service, or freight rail service. The term includes air and  
592 subsurface rights, services that provide a local area network  
593 for devices for transmitting data over wireless networks, and  
594 advertising.

595 (2) ~~(1)~~ "Branch line continuance project" means a project  
596 that involves branch line rehabilitation, new connecting track,  
597 rail banking, and other similar types of projects, including  
598 those specifically identified in the federal Railroad  
599 Revitalization and Regulatory Reform Act of 1976, and subsequent  
600 amendments to that act.

601 (3) "Commuter rail passenger" or "passengers" means all  
602 persons, ticketed or unticketed, using the commuter rail service  
603 on a department-owned rail corridor:

604 (a) On board trains, locomotives, rail cars, or rail  
605 equipment employed in commuter rail service or entraining  
606 thereon and detraining therefrom;

607 (b) On or about the rail corridor for any purpose related  
608 to the commuter rail service, including parking, inquiring about  
609 commuter rail service, or purchasing tickets therefor, and  
610 coming to, waiting for, leaving from, or observing trains,  
611 locomotives, rail cars, or rail equipment; or

612 (c) Meeting, assisting, or in the company of any person  
613 described in paragraph (a) or paragraph (b).

614 (4) "Commuter rail service" means the transportation of  
615 commuter rail passengers and other passengers by rail pursuant  
616 to a rail program provided by the department or any other

PCB EDCA 09B-01

ORIGINAL

2009

617 governmental entity.

618 (5) "Governmental entity" or "entities" has the same  
619 meaning as provided in s. 11.45, including a "public agency" as  
620 defined in s. 163.01.

621 (6) ~~(2)~~ "Intercity rail transportation system" means the  
622 network of railroad facilities used or available for interstate  
623 and intrastate passenger and freight operations by railroads,  
624 whether or not on a schedule or whether or not restricted.

625 (7) "Limited covered accident" means a collision directly  
626 between the trains, locomotives, rail cars, or rail equipment of  
627 the department and the freight rail operator only, where the  
628 collision is caused by or arising from the willful misconduct of  
629 the freight rail operator or its subsidiaries, agents,  
630 licensees, employees, officers, or directors or where punitive  
631 damages or exemplary damages are awarded due to the conduct of  
632 the freight rail operator or its subsidiaries, agents,  
633 licensees, employees, officers, or directors.

634 (8) "Rail corridor" means a linear contiguous strip of  
635 real property that is used for rail service. The term includes  
636 the corridor and structures essential to railroad operations,  
637 including the land, structures, improvements, rights-of-way,  
638 easements, rail lines, rail beds, guideway structures, switches,  
639 yards, parking facilities, power relays, switching houses, rail  
640 stations, any ancillary development, and any other facilities or  
641 equipment used for the purposes of construction, operation, or  
642 maintenance of a railroad that provides rail service.

643 (9) "Rail corridor invitee" means all persons who are on  
644 or about a department-owned rail corridor:

PCB EDCA 09B-01

ORIGINAL

2009

645 (a) For any purpose related to any ancillary development  
646 thereon; or

647 (b) Meeting, assisting, or in the company of any person  
648 described in paragraph (a).

649 (10)-(3) "Rail programs" means those programs administered  
650 by the state or other governmental entities which involve  
651 projects affecting the movement of people or goods by rail lines  
652 that have been or will be constructed to serve freight or  
653 passenger markets within a city or between cities.

654 (11)-(4) "Rail service development project" means a project  
655 undertaken by a public agency to determine whether a new or  
656 innovative technique or measure can be utilized to improve or  
657 expand rail service. The duration of the project funding shall  
658 be limited according to the type of project and in no case shall  
659 exceed 3 years. Rail service development projects include those  
660 projects and other actions undertaken to enhance railroad  
661 operating efficiency or increased rail service, including  
662 measures that result in improved speed profiles, operations, or  
663 technological applications that lead to reductions in operating  
664 costs and increases in productivity or service.

665 (12)-(5) "Railroad" or "rail system" means any common  
666 carrier fixed-guideway transportation system such as the  
667 conventional steel rail-supported, steel-wheeled system as well  
668 as the high-speed rail system defined in s. 341.8203. ~~The term~~  
669 ~~does not include a high-speed rail line developed by the~~  
670 ~~Department of Transportation pursuant to ss. 341.8201-341.842.~~

671 (13)-(6) "Railroad capital improvement project" means a  
672 project identified by the rail component of the Florida

PCB EDCA 09B-01

ORIGINAL

2009

673 Transportation Plan, which project involves the leasing,  
674 acquisition, design, construction, reconstruction, or  
675 improvement to the existing intercity rail transportation system  
676 or future segments thereof, including such items as locomotives  
677 and other rolling stock, tracks, terminals, and rights-of-way  
678 for the continuance or expansion of rail service as necessary to  
679 ensure the continued effectiveness of the state's rail  
680 facilities and systems in meeting mobility and industrial  
681 development needs.

682 (14) "Railroad operations" means the use of the rail  
683 corridor to conduct commuter rail service, intercity rail  
684 passenger service, or freight rail service.

685 (15)~~(7)~~ "Train" means any locomotive engine that is  
686 powered by diesel fuel, electricity, or other means, with or  
687 without cars coupled thereto, and operated upon a railroad track  
688 or any other form of fixed guideway, except that the term does  
689 not include a light rail vehicle such as a streetcar or people  
690 mover.

691 Section 6. Section 341.302, Florida Statutes, is amended  
692 to read:

693 341.302 Rail program;~~7~~ duties and responsibilities of the  
694 department.—The department, in conjunction with other  
695 governmental entities, including the rail enterprise ~~units~~ and  
696 the private sector, shall develop and implement a rail program  
697 of statewide application designed to ensure the proper  
698 maintenance, safety, revitalization, and expansion of the rail  
699 system to assure its continued and increased availability to  
700 respond to statewide mobility needs. Within the resources

PCB EDCA 09B-01

ORIGINAL

2009

provided pursuant to chapter 216, and as authorized under  
federal law Title 49 C.F.R. part 212, the department shall:

(1) Provide the overall leadership, coordination, and  
financial and technical assistance necessary to assure the  
effective responses of the state's rail system to current and  
anticipated mobility needs.

(2) Promote and facilitate the implementation of advanced  
rail systems, including high-speed rail and magnetic levitation  
systems.

(3) Develop and periodically update the rail system plan,  
on the basis of an analysis of statewide transportation needs.

(a) The plan may contain detailed regional components,  
consistent with regional transportation plans, as needed to  
ensure connectivity within the state's regions, and it shall be  
consistent with the Florida Transportation Plan developed  
pursuant to s. 339.155. The rail system plan shall include an  
identification of priorities, programs, and funding levels  
required to meet statewide and regional needs. The rail system  
plan shall be developed in a manner that will assure the maximum  
use of existing facilities and the optimum integration and  
coordination of the various modes of transportation, public and  
private, in the most cost-effective manner possible. The rail  
system plan shall be updated no later than January 1, 2011, and  
at least every 5 2 years thereafter, and include plans for both  
passenger rail service and freight rail service, accompanied by  
a report to the Legislature regarding the status of the plan.

(b) In recognition of the department's role in the  
enhancement of the state's rail system to improve freight and

PCB EDCA 09B-01

ORIGINAL

2009

passenger mobility, the department shall:

1. Work closely with all affected communities along an impacted freight rail corridor to identify and address anticipated impacts associated with an increase in freight rail traffic due to implementation of passenger rail.

2. In coordination with the affected local governments and CSX Transportation, Inc., finalize all viable alternatives from the department's Rail Traffic Evaluation Study to identify and develop an alternative route for through freight rail traffic moving through Central Florida, including the counties of Polk and Hillsborough, which would address, to the extent practicable, the effects of commuter rail.

3. Provide technical assistance to a coalition of local governments in Central Florida, including the counties of Brevard, Citrus, Hernando, Hillsborough, Lake, Marion, Orange, Osceola, Pasco, Pinellas, Polk, Manatee, Sarasota, Seminole, Sumter, and Volusia, and the municipalities within those counties, to develop a regional rail system plan that addresses passenger and freight opportunities in the region, is consistent with the Florida Rail System Plan, and incorporates appropriate elements of the Tampa Bay Area Regional Authority Master Plan, the Metroplan Orlando Regional Transit System Concept Plan, including the SunRail project, and the Florida Department of Transportation Alternate Rail Traffic Evaluation.

(4) As part of the work program of the department, formulate a specific program of projects and financing to respond to identified railroad needs.

(5) Provide technical and financial assistance to units of



PCB EDCA 09B-01

ORIGINAL

2009

757 local government to address identified rail transportation  
758 needs.

759 (6) Secure and administer federal grants, loans, and  
760 apportionments for rail projects within this state when  
761 necessary to further the statewide program.

762 (7) Develop and administer state standards concerning the  
763 safety and performance of rail systems, hazardous material  
764 handling, and operations. Such standards shall be developed  
765 jointly with representatives of affected rail systems, with full  
766 consideration given to nationwide industry norms, and shall  
767 define the minimum acceptable standards for safety and  
768 performance.

769 (8) Conduct, at a minimum, inspections of track and  
770 rolling stock; train signals and related equipment; hazardous  
771 materials transportation, including the loading, unloading, and  
772 labeling of hazardous materials at shippers', receivers', and  
773 transfer points; and train operating practices to determine  
774 adherence to state and federal standards. Department personnel  
775 may enforce any safety regulation issued under the Federal  
776 Government's preemptive authority over interstate commerce.

777 (9) Assess penalties, in accordance with the applicable  
778 federal regulations, for the failure to adhere to the state  
779 standards.

780 (10) Administer rail operating and construction programs,  
781 which programs shall include the regulation of maximum train  
782 operating speeds, the opening and closing of public grade  
783 crossings, the construction and rehabilitation of public grade  
784 crossings, and the installation of traffic control devices at

PCB EDCA 09B-01

ORIGINAL

2009

public grade crossings, the administering of the programs by the department including participation in the cost of the programs.

(11) Coordinate and facilitate the relocation of railroads from congested urban areas to nonurban areas when relocation has been determined feasible and desirable from the standpoint of safety, operational efficiency, and economics.

(12) Implement a program of branch line continuance projects when an analysis of the industrial and economic potential of the line indicates that public involvement is required to preserve essential rail service and facilities.

(13) Provide new rail service and equipment when:

(a) Pursuant to the transportation planning process, a public need has been determined to exist;

(b) The cost of providing such service does not exceed the sum of revenues from fares charged to users, services purchased by other public agencies, local fund participation, and specific legislative appropriation for this purpose; and

(c) Service cannot be reasonably provided by other governmental or privately owned rail systems.

The department may own, lease, and otherwise encumber facilities, equipment, and appurtenances thereto, as necessary to provide new rail services; or the department may provide such service by contracts with privately owned service providers.

(14) Furnish required emergency rail transportation service if no other private or public rail transportation operation is available to supply the required service and such service is clearly in the best interest of the people in the

PCB EDCA 09B-01

ORIGINAL

2009

communities being served. Such emergency service may be furnished through contractual arrangement, actual operation of state-owned equipment and facilities, or any other means determined appropriate by the secretary.

(15) Assist in the development and implementation of marketing programs for rail services and of information systems directed toward assisting rail systems users.

(16) Conduct research into innovative or potentially effective rail technologies and methods and maintain expertise in state-of-the-art rail developments.

(17) In conjunction with the acquisition, ownership, construction, operation, maintenance, and management of a rail corridor, have the authority to:

(a) Assume the obligation by contract to forever protect, defend, indemnify, and hold harmless the freight rail operator, or its successors, from whom the department has acquired a real property interest in the rail corridor, and that freight rail operator's officers, agents, and employees, from and against any liability, cost, and expense, including, but not limited to, commuter rail passengers and rail corridor invitees in the rail corridor, regardless of whether the loss, damage, destruction, injury, or death giving rise to any such liability, cost, or expense is caused in whole or in part, and to whatever nature or degree, by the fault, failure, negligence, misconduct, nonfeasance, or misfeasance of such freight rail operator, its successors, or its officers, agents, and employees, or any other person or persons whomsoever, provided that such assumption of liability of the department by contract shall not in any

PCB EDCA 09B-01

ORIGINAL

2009

instance exceed the following parameters of allocation of risk:

1. The department may be solely responsible for any loss, injury, or damage to commuter rail passengers, or rail corridor invitees, or trespassers, regardless of circumstances or cause, subject to subparagraphs 2., 3., 4., 5., and 6.

2. In the event of a limited covered accident, the authority of the department to protect, defend and indemnify the freight operator for all liability, cost and expense, including punitive or exemplary damages, in excess of the deductible or self-insurance retention fund established under paragraph (b) and actually in force at the time of the limited covered accident exists only if the freight operator agrees, with respect to the limited covered accident, to protect, defend, and indemnify the department for the amount of the deductible or self-insurance retention fund established under paragraph (b) and actually in force at the time of the limited covered accident.

3. When only one train is involved in an incident, the department may be solely responsible for any loss, injury, or damage if the train is a department train or other train pursuant to subparagraph 4., but only if when an incident occurs with only a freight train involved, including incidents with trespassers or at grade crossings, the freight rail operator is solely responsible for any loss, injury, or damage, except for commuter rail passengers and rail corridor invitees.

4. For the purposes of this subsection, any train involved in an incident that is neither the department's train nor the freight rail operator's train, hereinafter referred to in this

PCB EDCA 09B-01

ORIGINAL

2009

subsection as an "other train," may be treated as a department train, solely for purposes of any allocation of liability between the department and the freight rail operator only, but only if the department and the freight rail operator share responsibility equally as to third parties outside the rail corridor who incur loss, injury, or damage as a result of any incident involving both a department train and a freight rail operator train, and the allocation as between the department and the freight rail operator, regardless of whether the other train is treated as a department train, shall remain one-half each as to third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident. The involvement of any other train shall not alter the sharing of equal responsibility as to third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident.

5. When more than one train is involved in an incident:

a. If only a department train and freight rail operator's train, or only an other train as described in subparagraph 4. and a freight rail operator's train, are involved in an incident, the department may be responsible for its property and all of its people, all commuter rail passengers, rail corridor invitees, but only if the freight rail operator is responsible for its property and all of its people, and the department and the freight rail operator each share one-half responsibility as to trespassers or third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident.

b. If a department train, a freight rail operator train, and any other train are involved in an incident, the allocation

PCB EDCA 09B-01

ORIGINAL

2009

897 of liability between the department and the freight rail  
898 operator, regardless of whether the other train is treated as a  
899 department train, shall remain one-half each as to third parties  
900 outside the rail corridor who incur loss, injury, or damage as a  
901 result of the incident; the involvement of any other train shall  
902 not alter the sharing of equal responsibility as to third  
903 parties outside the rail corridor who incur loss, injury, or  
904 damage as a result of the incident; and, if the owner, operator,  
905 or insurer of the other train makes any payment to injured third  
906 parties outside the rail corridor who incur loss, injury, or  
907 damage as a result of the incident, the allocation of credit  
908 between the department and the freight rail operator as to such  
909 payment shall not in any case reduce the freight rail operator's  
910 third-party-sharing allocation of one-half under this paragraph  
911 to less than one-third of the total third party liability.

912 6. Any such contractual duty to protect, defend,  
913 indemnify, and hold harmless such a freight rail operator shall  
914 expressly include a specific cap on the amount of the  
915 contractual duty, which amount shall not exceed \$200 million  
916 without prior legislative approval, and the department to  
917 purchase liability insurance and establish a self-insurance  
918 retention fund in the amount of the specific cap established  
919 under this subparagraph, provided that:

920 a. No such contractual duty shall in any case be effective  
921 nor otherwise extend the department's liability in scope and  
922 effect beyond the contractual liability insurance and self-  
923 insurance retention fund required pursuant to this paragraph;  
924 and

PCB EDCA 09B-01

ORIGINAL

2009

b. The freight rail operator's compensation to the department for future use of the department's rail corridor shall include a monetary contribution to the cost of such liability coverage for the sole benefit of the freight rail operator.

(b) Purchase liability insurance, which amount shall not exceed \$200 million, and establish a self-insurance retention fund for the purpose of paying the deductible limit established in the insurance policies it may obtain, including coverage for the department, any freight rail operator as described in paragraph (a), commuter rail service providers, governmental entities, or any ancillary development, which self-insurance retention fund or deductible shall not exceed \$10 million. The insureds shall pay a reasonable monetary contribution to the cost of such liability coverage for the sole benefit of the insured. Such insurance and self-insurance retention fund may provide coverage for all damages, including, but not limited to, compensatory, special, and exemplary, and be maintained to provide an adequate fund to cover claims and liabilities for loss, injury, or damage arising out of or connected with the ownership, operation, maintenance, and management of a rail corridor.

(c) Incur expenses for the purchase of advertisements, marketing, and promotional items.

Neither the assumption by contract to protect, defend, indemnify, and hold harmless; the purchase of insurance; nor the establishment of a self-insurance retention fund shall be deemed

PCB EDCA 09B-01

ORIGINAL

2009

to be a waiver of any defense of sovereign immunity for torts  
nor deemed to increase the limits of the department's or the  
governmental entity's liability for torts as provided in s.  
768.28. The requirements of s. 287.022(1) shall not apply to the  
purchase of any insurance under this subsection. The provisions  
of this subsection shall apply and inure fully as to any other  
governmental entity providing commuter rail service and  
constructing, operating, maintaining, or managing a rail  
corridor on publicly owned right-of-way under contract by the  
governmental entity with the department or a governmental entity  
designated by the department. Notwithstanding any law to the  
contrary, procurement for the construction, operation,  
maintenance, and management of any rail corridor described in  
this subsection, whether by the department, a governmental  
entity under contract with the department, or a governmental  
entity designated by the department, shall be pursuant to s.  
287.057 and shall include, but not be limited to, criteria for  
the consideration of qualifications, technical aspects of the  
proposal, and price. Further, any such contract for design-build  
shall be procured pursuant to the criteria in s. 337.11(7).

~~(18)~~~~(17)~~ Exercise such other functions, powers, and duties  
in connection with the rail system plan as are necessary to  
develop a safe, efficient, and effective statewide  
transportation system.

Section 7. The Department of Transportation may complete  
an escrowed closing on the pending Central Florida Rail Corridor  
acquisition; however, the drawdown of such escrowed closing  
shall not occur unless and until final Federal Transit



PCB EDCA 09B-01

ORIGINAL

2009

Administration full-funding grant agreement approval is obtained  
for the proposed Central Florida Commuter Rail Transit Project  
Initial Operating Segment.

Section 8. Effective July 1, 2010, subsection (4) of  
section 341.303, Florida Statutes, is amended, and subsections  
(5) and (6) are added to that section, to read:

341.303 Funding authorization and appropriations;  
eligibility and participation.—

(4) FUND PARTICIPATION; OPERATING COSTS SERVICE  
DEVELOPMENT.—

(a) The department is authorized to fund up to 100 ~~50~~  
percent of the net operating costs of any eligible intercity or  
commuter rail system for up to 7 years, beginning from the open-  
to-service date ~~service development project that is local in~~  
~~scope, not to exceed the local match.~~

~~(b) The department is authorized to fund up to 100 percent~~  
~~of the net operating costs of any eligible intercity or commuter~~  
~~rail service development project that is statewide in scope or~~  
~~involves more than one county if no other governmental unit of~~  
~~appropriate jurisdiction exists. For commuter rail service,~~  
~~after the 5th year of operation, the department's participation~~  
~~is limited to a maximum of 50 percent of the net operating costs~~  
~~of the service.~~

~~(c) Each such local or statewide service development~~  
~~project shall be identified in the appropriation request of the~~  
~~department in a manner that defines project objectives, the~~  
~~assigned operational and financial responsibilities, the~~  
~~timeframe required to develop the service, and the criteria by~~

PCB EDCA 09B-01

ORIGINAL

2009

1009 ~~which the success of the project can be judged.~~

1010 ~~(d) Any service development project funded under this~~  
1011 ~~section shall continue to be eligible for such funds only if the~~  
1012 ~~project reaches a systemwide operating ratio of 25 percent or~~  
1013 ~~more during the 5th year.~~

1014 ~~(b)(e)~~ The term "net operating costs" means all operating  
1015 costs of the project less any federal funds, fares, or other  
1016 sources of income to the project.

1017 (5) FUND PARTICIPATION; FLORIDA RAIL ENTERPRISE.-

1018 (a) The department, through the Florida Rail Enterprise,  
1019 is authorized to use funds provided under s. 201.15(1)(c)1.d. to  
1020 fund up to 50 percent of the nonfederal share of the costs of  
1021 any eligible passenger rail capital improvement project.

1022 (b) The department, through the Florida Rail Enterprise,  
1023 is authorized to use funds provided under s. 201.15(1)(c)1.d. to  
1024 fund up to 100 percent of planning and development costs related  
1025 to the provision of a passenger rail system, including, but not  
1026 limited to, preliminary engineering, revenue studies,  
1027 environmental impact studies, financial advisory services,  
1028 engineering design, and other appropriate professional services.

1029 (c) The department, through the Florida Rail Enterprise,  
1030 is authorized to use funds provided under s. 201.15(1)(c)1.d. to  
1031 fund the high-speed rail system.

1032 (d) The department, through the Florida Rail Enterprise,  
1033 is authorized to use funds provided under s. 201.15(1)(c)1.d. to  
1034 fund projects necessary to identify or address anticipated  
1035 impacts of increased freight rail traffic resulting from the  
1036 implementation of passenger rail systems as provided in s.

PCB EDCA 09B-01

ORIGINAL

2009

341.302(3)(b).

(6) FLORIDA RAIL ENTERPRISE; BUDGET.-

(a) The Florida Rail Enterprise shall be a single budget entity and shall develop a budget pursuant to chapter 216. The enterprise's budget shall be submitted to the Legislature along with the department's budget. All passenger rail funding by the department shall be included in this budget entity.

(b) Notwithstanding the provisions of s. 216.301 to the contrary and in accordance with s. 216.351, the Executive Office of the Governor shall, on July 1 of each year, certify forward all unexpended funds appropriated or provided pursuant to this section for the enterprise. Of the unexpended funds certified forward, any unencumbered amounts shall be carried forward. Such funds carried forward shall not exceed 5 percent of the original approved operating budget of the enterprise pursuant to s. 216.181(1). Funds carried forward pursuant to this section may be used for any lawful purpose, including, but not limited to, promotional and market activities, technology, and training. Any certified-forward funds remaining undisbursed on September 30 of each year shall be carried forward.

Section 9. Section 341.8201, Florida Statutes, is amended to read:

341.8201 Short title.—Sections 341.8201-341.842 may be cited as the "Florida ~~High-Speed Rail Enterprise Authority~~ Act."

Section 10. Section 341.8202, Florida Statutes, is repealed.

Section 11. Section 341.8203, Florida Statutes, is amended to read:

PCB EDCA 09B-01

ORIGINAL

2009

341.8203 Definitions.—As used in ss. 341.8201-341.842 ~~this~~  
~~act~~, unless the context clearly indicates otherwise, the term:

(1) "Associated development" means property, equipment, buildings, or other related ~~ancillary~~ facilities which are built, installed, used, or established to provide financing, funding, or revenues for the planning, building, managing, and operation of a high-speed rail system and which are associated with or part of the rail stations. The term includes air and subsurface rights, services that provide local area network devices for transmitting data over wireless networks, ~~property, including air rights, necessary for joint development, such as parking facilities, retail establishments, restaurants, hotels, offices, advertising, or other commercial, civic, residential, or support facilities, and may also include property necessary to protect or preserve the rail station area by reducing urban blight or traffic congestion or property necessary to accomplish any of the purposes set forth in this subsection which are reasonably anticipated or necessary.~~

(2) "Enterprise" means the Florida Rail Enterprise.  
~~"Authority" means the Florida High-Speed Rail Authority and its agents. However, for purposes of s. 341.840, the term does not include any agent of the authority except as provided in that section.~~

~~(3) "Central Florida" means the counties of Lake, Seminole, Orange, Osceola, Citrus, Sumter, Volusia, Brevard, Hernando, Pasco, Hillsborough, Pinellas, and Polk.~~

~~(4) "DBOM contract" means the document and all concomitant rights approved by the authority providing the selected person~~

PCB EDCA 09B-01

ORIGINAL

2009

1093 | ~~or entity the exclusive right to design, build, operate, and~~  
1094 | ~~maintain a high-speed rail system.~~

1095 |     ~~(5) "DBOM & F contract" means the document and all~~  
1096 | ~~concomitant rights approved by the authority providing the~~  
1097 | ~~selected person or entity the exclusive right to design, build,~~  
1098 | ~~operate, maintain, and finance a high-speed rail system.~~

1099 |     (3)(6) "High-speed rail system" means any high-speed fixed  
1100 | guideway system for transporting people or goods, which system  
1101 | is, by definition of the United States Department of  
1102 | Transportation, reasonably expected to reach speeds of at least  
1103 | 110 ~~capable of operating at speeds in excess of 120~~ miles per  
1104 | hour, including, but not limited to, a monorail system, dual  
1105 | track rail system, suspended rail system, magnetic levitation  
1106 | system, pneumatic repulsion system, or other system approved by  
1107 | the enterprise authority. The term includes a corridor,  
1108 | associated intermodal connectors, and structures essential to  
1109 | the operation of the line, including the land, structures,  
1110 | improvements, rights-of-way, easements, rail lines, rail beds,  
1111 | guideway structures, switches, yards, parking facilities, power  
1112 | relays, switching houses, and rail stations and also includes  
1113 | facilities or equipment used exclusively for the purposes of  
1114 | design, construction, operation, maintenance, or the financing  
1115 | of the high-speed rail system.

1116 |     (4)(7) "Joint development" means the planning, managing,  
1117 | financing, or constructing of projects adjacent to, functionally  
1118 | related to, or otherwise related to a high-speed rail system  
1119 | pursuant to agreements between any person, firm, corporation,  
1120 | association, organization, agency, or other entity, public or

PCB EDCA 09B-01

ORIGINAL

2009

1121 private.

1122       ~~(8) "Northeast Florida" means the counties of Nassau,~~

1123 ~~Duval, Clay, St. Johns, Putnam, Alachua, Marion, and Flagler.~~

1124       ~~(9) "Northwest Florida" means the counties of Escambia,~~

1125 ~~Santa Rosa, Okaloosa, Walton, Holmes, Washington, Jackson,~~

1126 ~~Gadsden, Bay, Calhoun, Liberty, Gulf, Franklin, Leon, Jefferson,~~

1127 ~~Madison, Wakulla, Taylor, Hamilton, Suwannee, Columbia, Baker,~~

1128 ~~Union, Lafayette, Gilchrist, Dixie, Bradford, and Levy.~~

1129       ~~(5)-(10)~~ "Rail station," "station," or "high-speed rail

1130 station" means any structure or transportation facility that is

1131 part of a high-speed rail system designed to accommodate the

1132 movement of passengers from one mode of transportation to

1133 another at which passengers board or disembark from

1134 transportation conveyances and transfer from one mode of

1135 transportation to another.

1136       ~~(6)-(11)~~ "Selected person or entity" means the person or

1137 entity to whom the enterprise authority awards a contract ~~under~~

1138 ~~s. 341.834~~ to establish a high-speed rail system pursuant to ss.

1139 341.8201-341.842 ~~this act.~~

1140       ~~(12) "Southeast Florida" means the counties of Broward,~~

1141 ~~Monroe, Miami-Dade, Indian River, St. Lucie, Martin, Okeechobee,~~

1142 ~~and Palm Beach.~~

1143       ~~(13) "Southwest Florida" means the counties of Manatee,~~

1144 ~~Hardee, DeSoto, Sarasota, Highlands, Charlotte, Glades, Lee,~~

1145 ~~Hendry, and Collier.~~

1146       ~~(14) "Urban areas" means Central Florida, Northeast~~

1147 ~~Florida, Northwest Florida, Southeast Florida, and Southwest~~

1148 ~~Florida.~~

PCB EDCA 09B-01

ORIGINAL

2009

Section 12. Section 341.821, Florida Statutes, is repealed.

Section 13. Section 341.822, Florida Statutes, is amended to read:

341.822 Powers and duties.—

(1) ~~The enterprise authority created and established by this act~~ shall locate, plan, design, finance, construct, maintain, own, operate, administer, and manage the high-speed rail system in the state.

(2)(a) In addition to the powers granted to the department, the enterprise has full authority to exercise all powers granted to it under this chapter. Powers shall include, but are not limited to, the ability to plan, construct, maintain, repair, and operate a high-speed rail system, to acquire corridors, and to coordinate the development and operation of publicly funded passenger rail systems in the state. ~~The authority may exercise all powers granted to corporations under the Florida Business Corporation Act, chapter 607, except the authority may only incur debt in accordance with levels authorized by the Legislature.~~

(b) It is the express intention of ss. 341.8201-341.842 that the enterprise be authorized to plan, develop, own, purchase, lease, or otherwise acquire, demolish, construct, improve, relocate, equip, repair, maintain, operate, and manage the high-speed rail system; to expend funds to publicize, advertise, and promote the advantages of using the high-speed rail system and its facilities; and to cooperate, coordinate, partner, and contract with other entities, public and private,

PCB EDCA 09B-01

ORIGINAL

2009

1177 | to accomplish these purposes.

1178 |       ~~(3) The authority shall have perpetual succession as a~~  
1179 | ~~body politic and corporate.~~

1180 |       (3)(4) The enterprise shall have the authority to employ  
1181 | procurement methods available to the department under chapters  
1182 | 255, 287, 334, and 337, or otherwise in accordance with law. The  
1183 | enterprise may also solicit proposals and, with legislative  
1184 | approval as evidenced by approval of the project in the  
1185 | department's work program, enter into agreements with private  
1186 | entities, or consortia thereof, for the building, operation,  
1187 | ownership, or financing of the high-speed rail system authority  
1188 | ~~is authorized to seek and obtain federal matching funds or any~~  
1189 | ~~other funds to fulfill the requirements of this act either~~  
1190 | ~~directly or through the Department of Transportation.~~

1191 |       ~~(4)(5) The authority may employ an executive director of~~  
1192 | ~~the enterprise shall appoint staff, who shall be exempt from~~  
1193 | ~~part II of chapter 110 as it may require and shall determine the~~  
1194 | ~~qualifications and fix the compensation. The authority may~~  
1195 | ~~delegate to one or more of its agents or employees such of its~~  
1196 | ~~power as it deems necessary to carry out the purposes of this~~  
1197 | ~~act, subject always to the supervision and control of the~~  
1198 | ~~authority.~~

1199 |       (5) The powers conferred upon the enterprise under ss.  
1200 | 341.8201-341.842 shall be in addition and supplemental to the  
1201 | existing powers of the department, and these powers shall not be  
1202 | construed as repealing any provision of any other law, general  
1203 | or local, but shall supersede such other laws that are  
1204 | inconsistent with the exercise of the powers provided under ss.



PCB EDCA 09B-01

ORIGINAL

2009

341.8201-341.842 and provide a complete method for the exercise of such powers granted.

(6) Any proposed rail enterprise project or improvement shall be developed in accordance with the Florida Transportation Plan and the work program under s. 339.135.

Section 14. Section 341.8225, Florida Statutes, is created to read:

341.8225 Department of Transportation sole governmental entity to acquire, construct, or operate high-speed rail projects; exception.—

(1) No governmental entity other than the department may acquire, construct, maintain, or operate the high-speed rail system except upon specific authorization of the Legislature.

(2) Local governmental entities, as defined in s. 334.03(14), may negotiate with the department for the design, right-of-way acquisition, and construction of any component of the high-speed rail system within areas of their respective jurisdictions or within counties with which they have interlocal agreements.

Section 15. Sections 341.823, 341.824, 341.827, 341.828, 341.829, 341.830, 341.831, 341.832, 341.833, 341.834, and 341.835, Florida Statutes, are repealed.

Section 16. Section 341.836, Florida Statutes, is amended to read:

341.836 Associated development.—

(1) The enterprise authority, alone or as part of a joint development, may undertake ~~development of~~ associated developments to be a source of revenue for the establishment,

PCB EDCA 09B-01

ORIGINAL

2009

1233 construction, operation, or maintenance of the high-speed rail  
1234 system. Such associated developments must be ~~associated with a~~  
1235 ~~rail station and have pedestrian ingress to and egress from the~~  
1236 ~~rail station;~~ be consistent, to the extent feasible, with  
1237 applicable local government comprehensive plans and local land  
1238 development regulations; and otherwise be in compliance with ss.  
1239 341.8201-341.842 ~~the provisions of this act.~~

1240 (2) Sections 341.8201-341.842 ~~This act does not~~  
1241 prohibit the enterprise authority, the selected person or  
1242 entity, or a party to a joint venture with the enterprise  
1243 ~~authority~~ or its selected person or entity from obtaining  
1244 approval, pursuant to any other law, for any associated  
1245 development that is reasonably related to the high-speed rail  
1246 system.

1247 Section 17. Section 341.837, Florida Statutes, is  
1248 repealed.

1249 Section 18. Section 341.838, Florida Statutes, is amended  
1250 to read:

1251 341.838 Fares, rates, rents, fees, and charges.—

1252 (1) The enterprise may establish ~~authority is authorized~~  
1253 ~~to fix,~~ revise, charge, and collect fares, rates, rents, fees,  
1254 charges, and revenues for the use of and for the services  
1255 furnished, or to be furnished, by the system and to contract  
1256 with any person, partnership, association, corporation, or other  
1257 body, public or private, in respect thereof. Such fares, rates,  
1258 rents, fees, and charges shall be reviewed annually by the  
1259 enterprise ~~authority~~ and may be adjusted as set forth in the  
1260 contract setting such fares, rates, rents, fees, or charges. The

PCB EDCA 09B-01

ORIGINAL

2009

1261 funds collected pursuant to this section ~~hereunder~~ shall, with  
1262 any other funds available, be used to pay the cost of ~~all~~  
1263 ~~administrative expenses of the authority, and the cost of~~  
1264 designing, building, operating, financing, and maintaining the  
1265 system and each and every portion thereof, to the extent that  
1266 the payment of such cost has not otherwise been adequately  
1267 provided for.

1268 (2) Fares, rates, rents, fees, and charges established  
1269 ~~fixed~~, revised, charged, and collected by the enterprise  
1270 pursuant to this section shall not be subject to supervision or  
1271 regulation by any other department, commission, board, body,  
1272 bureau, or agency of this state other than the enterprise  
1273 authority.

1274 Section 19. Section 341.839, Florida Statutes, is amended  
1275 to read:

1276 341.839 Alternate means.—Sections 341.8201-341.842 ~~The~~  
1277 ~~foregoing sections of this act shall be deemed to provide an~~  
1278 additional and alternative method for accomplishing the purposes  
1279 authorized therein, ~~and are~~ shall be regarded as supplemental  
1280 and additional to powers conferred by other laws. Except as  
1281 otherwise expressly provided in ss. 341.8201-341.842 ~~this act~~,  
1282 none of the powers granted to the enterprise authority under ss.  
1283 341.8201-341.842 ~~are the provisions of this act shall be~~ subject  
1284 to the supervision or require the approval or consent of any  
1285 municipality or political subdivision or any commission, board,  
1286 body, bureau, or official.

1287 Section 20. Section 341.841, Florida Statutes, is  
1288 repealed.

PCB EDCA 09B-01

ORIGINAL

2009

1289           Section 21. Paragraphs (j) and (m) of subsection (2) of  
1290 section 110.205, Florida Statutes, are amended to read:  
1291           110.205 Career service; exemptions.—  
1292           (2) EXEMPT POSITIONS.—The exempt positions that are not  
1293 covered by this part include the following:  
1294           (j) The appointed secretaries and the State Surgeon  
1295 General, assistant secretaries, deputy secretaries, and deputy  
1296 assistant secretaries of all departments; the executive  
1297 directors, assistant executive directors, deputy executive  
1298 directors, and deputy assistant executive directors of all  
1299 departments; the directors of all divisions and those positions  
1300 determined by the department to have managerial responsibilities  
1301 comparable to such positions, which positions include, but are  
1302 not limited to, program directors, assistant program directors,  
1303 district administrators, deputy district administrators, the  
1304 Director of Central Operations Services of the Department of  
1305 Children and Family Services, the State Transportation  
1306 Development Administrator, State Public Transportation and Modal  
1307 Administrator, district secretaries, district directors of  
1308 transportation development, transportation operations,  
1309 transportation support, and the managers of the offices  
1310 specified in s. 20.23(4)~~(3)~~(b), of the Department of  
1311 Transportation. Unless otherwise fixed by law, the department  
1312 shall set the salary and benefits of these positions in  
1313 accordance with the rules of the Senior Management Service; and  
1314 the county health department directors and county health  
1315 department administrators of the Department of Health.  
1316           (m) All assistant division director, deputy division

PCB EDCA 09B-01

ORIGINAL

2009

1317 director, and bureau chief positions in any department, and  
1318 those positions determined by the department to have managerial  
1319 responsibilities comparable to such positions, which positions  
1320 include, but are not limited to:

1321       1. Positions in the Department of Health and the  
1322 Department of Children and Family Services that are assigned  
1323 primary duties of serving as the superintendent or assistant  
1324 superintendent of an institution.

1325       2. Positions in the Department of Corrections that are  
1326 assigned primary duties of serving as the warden, assistant  
1327 warden, colonel, or major of an institution or that are assigned  
1328 primary duties of serving as the circuit administrator or deputy  
1329 circuit administrator.

1330       3. Positions in the Department of Transportation that are  
1331 assigned primary duties of serving as regional toll managers and  
1332 managers of offices, as defined in s. 20.23(4)~~(3)~~(b) and  
1333 (5)~~(4)~~(c), and captains and majors of the Office of Motor  
1334 Carrier Compliance.

1335       4. Positions in the Department of Environmental Protection  
1336 that are assigned the duty of an Environmental Administrator or  
1337 program administrator.

1338       5. Positions in the Department of Health that are assigned  
1339 the duties of Environmental Administrator, Assistant County  
1340 Health Department Director, and County Health Department  
1341 Financial Administrator.

1342  
1343 Unless otherwise fixed by law, the department shall set the  
1344 salary and benefits of the positions listed in this paragraph in

PCB EDCA 09B-01

ORIGINAL

2009

1345 | accordance with the rules established for the Selected Exempt  
1346 | Service.

1347 |       Section 22. Except as otherwise expressly provided in this  
1348 | act, this act shall take effect upon becoming a law.



---

# **ECONOMIC DEVELOPMENT & COMMUNITY AFFAIRS POLICY COUNCIL**

## **Amendment Packet**

**Thursday, December 3, 2009  
11:15 A.M. – 6:00 P.M.  
404 HOB**

COUNCIL/COMMITTEE AMENDMENT

PCB Name: PCB EDCA 09B-01 (2009B)

**Amendment No. 1a**

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

Council/Committee hearing PCB: Economic Development & Community  
Affairs Policy Council  
Representative(s) Aubuchon offered the following:

**Amendment**

Delete lines 508 through 561 and insert:

5. Notwithstanding subparagraphs 1. and 2. and ss.  
206.46(3) and 334.044(26), and for fiscal years 2009-2010  
through 2013-2014 only, the department shall allocate up to \$15  
million of the first proceeds of the increased revenues  
estimated by the November 2009 Revenue Estimating Conference to  
be deposited into the State Transportation Trust Fund to provide  
for the portion of the transfer of funds included in s.  
343.58(4)(a)1.a. or s. 343.58(4)(a)2.a., whichever is  
applicable. The transfer of funds included in s. 343.58(4) may  
not negatively impact projects included in fiscal years 2009-  
2010 through 2013-2014 of the work program as of July 1, 2009,  
as amended pursuant to subsection (7). This subparagraph expires  
July 1, 2014.



COUNCIL/COMMITTEE AMENDMENT

PCB Name: PCB EDCA 09B-01 (2009B)

**Amendment No. 1a**

Section 4. Section 343.58, Florida Statutes, is amended to read:

343.58 County funding for the South Florida Regional Transportation Authority.—

(1) Each county served by the South Florida Regional Transportation Authority must dedicate and transfer not less than \$2.67 million to the authority annually. The recurring annual \$2.67 million must be dedicated by the governing body of each county before October 31 of each fiscal year. These funds may be used for capital, operations, and maintenance.

(2) At least \$45 million of a state-authorized, local option recurring funding source available to Broward, Miami-Dade, and Palm Beach counties is directed to the authority to fund its capital, operating, and maintenance expenses. The funding source shall be dedicated to the authority only if Broward, Miami-Dade, and Palm Beach counties impose the local option funding source.

(3) In addition, each county shall continue to annually fund the operations of the South Florida Regional Transportation Authority in an amount not less than \$1.565 million. Revenue raised pursuant to this subsection shall also be considered a dedicated funding source.

(4) Notwithstanding any other provision of law to the contrary and effective July 1, 2010, the department shall transfer annually from the State Transportation Trust Fund to the South Florida Regional Transportation Authority the amounts specified in subparagraph (a)1. or subparagraph (a)2.

COUNCIL/COMMITTEE AMENDMENT

PCB Name: PCB EDCA 09B-01 (2009B)

**Amendment No. 1a**

47        (a)1. If the authority becomes responsible for  
48 maintaining and dispatching the South Florida Rail Corridor:

49        a. \$15 million from the State Transportation Trust Fund to  
50 the South Florida Regional Transportation Authority for  
51 operations, maintenance, and dispatch; and

52        b. An amount no less than the work program commitments  
53 equal to \$27.1 million for fiscal year 2010-2011, as of July 1,  
54 2009, for operating assistance to the authority and corridor  
55 track maintenance and contract maintenance for the South Florida  
56 Rail Corridor.

57        2. If the authority does not become responsible for  
58 maintaining and dispatching the South Florida Rail Corridor:

59        a. \$13.3 million from the State Transportation Trust Fund  
60 to the South Florida Regional Transportation Authority for  
61 operations; and

62        b. An amount no less than the work program commitments  
63 equal to \$17.3 million for fiscal year 2010-2011, as of July 1,  
64 2009, for operating assistance to the authority.  
65  
66